

Canada. Parl. Senate. Standing
Comm.on Transport &
Communications, 1960.
Proceedings.

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Canada. Parl. Senate. Standing
Comm.on Transport and Communica-
tions, 1960.

SENATE OF CANADA

Standing Committee on Transport and Communications
3rd Session, 24th Parliament, 1960

INDEX

PAGE

| | |
|--|--------------------------|
| ARNAUD RAILWAY CO. | |
| Proposed railway | |
| Location | 2:13 |
| Rates | 2:23 |
| BRUNSON, KEITH, SECRETARY, WABUSH LAKE RAILWAY CO. AND ARNAUD RAILWAY CO. | |
| Bill S-24 | 2:11,14,17-9,27, 61-2 |
| BILL C-69, CANADIAN NATIONAL RAILWAYS FINANCING AND GUARANTEE ACT, 1960 | |
| Discussion, Clause 3 | 6:3-9,11-2,27-8 |
| Purpose | 6:7 |
| Report to Senate, without amendment | 6:37 |
| <i>See also</i> | |
| Canadian National Railway | |
| BILL C-72, ACT RESPECTING CONSTRUCTION BY CANADIAN NATIONAL RAILWAY CO. OF CERTAIN RAILWAY FACILITIES AT AND IN VICINITY OF CITY OF TORONTO | |
| Definitions | |
| Hump yard | 7:3,13 |
| Pull-back tracks | 7:3 |
| Discussion, Clause 2 | 7:7-8 |
| Report to Senate, without amendment | 7:5 |
| <i>See also</i> | |
| Canadian National Railway. Toronto, vicinity | |

BILL S-4, ACT TO AMEND WINDSOR HARBOUR
HARBOUR COMMISSIONERS

Definitions

Ordinary high water

1:12-3

Water front property

1:19

Discussion

Clause 12

1:14-5

Clause 13

1:15-6

Report to Senate, without amendment

1:6

See also

Harbours

BILL S-5, ACT TO INCORPORATE THE OSHAWA
COMMISSIONERS ACT

Report to Senate, without amendment

1:6

See also

Harbours

BILL S-10, ACT TO INCORPORATE NANAIMO
HARBOUR COMMISSIONERS

Report to Senate, without amendment

1:6

See also

Harbours

BILL S-24, ACT RESPECTING WABUSH LAKE
RAILWAY CO. LTD. AND ARNAUD RAILWAY CO.

Amendments

Clause 3

4:71

Clause 4

4:71

Discussion

Clause 2

4:82-5

Clause 3

4:73-4, 76-7

Clause 4

4:73, 76-7

Purpose, originated

3:36-7

Railway Act, relationship

2:13, 15-9, 26, 29:

3:37, 42-4, 48-9,

52-3, 60, 66, 67:

4:72

BILL S-24, ACT RESPECTING WABUSH LAKE
RAILWAY CO. LTD. AND ARNAUD RAILWAY CO.

(Cont'd)

Report to Senate, with amendments 4:85

See also

Arnaud Railway Co.

Wabush Lake, Nfld.

Wabush Railway Co.

BILL S-26, ACT TO AMEND NATIONAL ENERGY
BOARD ACT

Discussion

Clause 1 5:7,13,16

Clause 2 5:13,15,22

Clause 3 5:13-4,18

Report to Senate, without amendment 5:6

See also

National Energy Board

BOARD OF TRANSPORT COMMISSIONS

Approval, sale, assignment of railway co. 3:49

Jurisdiction, railways, within province 5:7,11

Order re rates, Hilton Mine, C.P.R. 3:51

Railways, rates, authority 2:23-4; 3:36-7,

51,60,65; 4:76,

80,83

Apply, within fixed time 3:66

BUS SERVICE

New Brunswick, extra-provincial, *Winner*
case 5:9-11

C.N.R.

See

Canadian National Railway

CANADIAN NATIONAL RAILWAY

| | |
|--|-----------|
| Annual budget | |
| Board of Directors, approval | 6:7 |
| Branch line construction | 6:34 |
| Capital requirements, sources | 6:9 |
| Equipment | 6:15,35 |
| Expenses, operating | 6:7 |
| Financing authority | 6:32 |
| Hotels | 6:27,34 |
| Investments, affiliated companies | 6:35 |
| Operating budget | 6:36 |
| Refundings | 6:36 |
| Revenues, operating | 6:7 |
| Road property by areas, summary | 6:33 |
| Summary | 6:12,31 |
| Authorization, borrow money | 6:8-9 |
| Bill C-69, discussion | 6:7-28 |
| Bill C-72, statement, discussion | 7:7-21 |
| Capital budget and estimated income account, 1960 | 6:29-36 |
| Capital invested in | 6:13-4,13 |
| Day-liners, service, crew | 6:22-3 |
| Deficits | |
| Comparisons | 6:17 |
| 1958, 1959 | 6:8,14-5 |
| Definitions | |
| Hump yard | 7:8 |
| Pull-back tracks | 7:8 |
| Team track | 7:9 |
| Equipment | 6:26 |
| Expenditures | |
| Dieselization | 6:16 |
| Yards, rehabilitation | 6:16 |
| Freight rate, increase | 6:17-8 |
| Grade separations, financed | 7:9 |
| Income tax, exempt | 6:18-9 |

| | |
|--|-----------|
| CANADIAN NATIONAL RAILWAY (Cont'd) | |
| Investments, research programs | 6:20 |
| Level crossings | 6:24-5 |
| Liquidation | 6:22 |
| Toronto, vicinity | |
| Access lines to hump yard | 7:17-9 |
| Expenditures | 7:9 |
| Financing, guarantees | 7:8,19 |
| Highway transport, competition | 7:16 |
| Hump yard, purpose | 7:13-5,20 |
| Piggy back operations | 7:15-6 |
| Railway lines, traffic, congestion | 7:10-2 |
| Railway yard, site proposed | 7:12-3 |
| Repair shop | 7:17 |
| Terminal requirements | 7:9-10 |
| Toronto Harbour Board, relationship | 7:19-20 |
| Trackage, salvage, value | 7:20-1 |
| <i>See also</i> | |
| Bill C-72 | |
| Trans-continental trains | 6:25 |
| <i>See also</i> | |
| Bill C-69 | |
| CANADIAN NATIONAL RAILWAYS CAPITAL REVISION ACT | |
| Finance minister, authority, obligations | 6:8,19 |
| CANADIAN NATIONAL RAILWAYS FINANCING AND GUARANTEE ACT, 1960 | |
| <i>See</i> | |
| Bill C-69 | |
| CANN, J.L., PROJECT DIRECTOR, C.N.R. | |
| Bill C-72 | 7:12-9 |

| | |
|--|------------------------|
| CAROL LAKE CO. | |
| Contractual obligations | 4:73-4,76-8,80 |
| Expropriation rights | 4:79 |
| Owners | 2:21 |
| Private mining carrier | 2:21; 3:41 |
| Railway | |
| Federal, incorporated as common carrier | 3:37 |
| Operations, route | 3:55 |
| Running rights | 3:47,67 |
| CAROL LAKE DISTRICT | |
| Ore deposits, development | 2:29; 3:40 |
| CONSTRUCTION BY CANADIAN NATIONAL RAILWAY CO. OF CERTAIN RAILWAY FACILITIES AT AND IN VICINITY OF CITY OF TORONTO, ACT RESPECTING | |
| <i>See</i> | |
| Bill C-72 | |
| deBILLY, JACQUES, Q.C., COUNSEL FOR MABUSH LAKE RAILWAY CO. AND ARNAUD RAILWAY CO. | |
| Bill S-24 | 2:13-4,18-9 |
| DE ROCHE, W.E.P., Q.C., COUNSEL FOR MABUSH LAKE RAILWAY CO. AND ARNAUD RAILWAY CO. | |
| Bill S-24 | 2:12-7,30; 3:59- 68 |
| DRIEDGER, E.A., ASSISTANT DEP. MIN. OF JUSTICE | |
| Bill S-26 | 5:2-15 |
| DURRELL, WILLIAM H., PRESIDENT, CAROL LAKE CO. | |
| Bill S-24 | 2:20 |

GORDON, DONALD, PRES., C.N.R.

Bill C-69

6:10-28

HARBOUR COMMISSION

National Harbour Board

Differences re jurisdiction of harbour

1:20

Liaison

1:27

Powers

1:14,18,20

Examples

1:16-7,20

Privileges, taxes

1:25

Reports to Transport Dept.

1:27

Revenue, expenditures

1:22,27

Rights, water frontage

1:17-8

HARBOURS

Administration

City Harbour Commission

1:8-9

National Harbours Board

1:8-9

Transport Dept.

1:2,10,12

Dredging, responsibility for cost

1:21-2

Governor-in-Council

Rates, approval

1:23-4

Ultimate authority

1:14-5

"Ordinary high water"

1:12-3

Public

Authorized by Order-in-Council

1:10

Boundaries defined

1:10-1,15

Water front property

1:19

See also

Bill S-4

Bill S-5

Bill S-10

IRON ORE CO.

Carol Lake Co., Quebec North Shore and

Labrador Railway Co., control of

2:19

IRON ORE CO. (Cont'd)

Picklands Mather and Co., correspondence,
excerpts

3:47-8

Railway, Wabush Lake

2:18

Financing of, agreement

Partial owners

2:15,17

KNOB LAKE (SCHEFFERVILLE) AREA

Iron ore deposits, development

3:39-40

MCGILLIVRAY, R.R., ASSISTANT COUNSEL,
LAW BRANCH, TRANSPORT DEPT.

Bill S-4

1:13-20,24-5

McKINNON, IAN N., CHAIRMAN, NATIONAL
ENERGY BOARD

Bill S-26

5:15-23

MacMILLAN, NORMAN, EXEC. VICE PRES., C.N.R.

Bill C-72

7:8-21

Discussion

7:7-8

Statement

MANNING, W.J., DIRECTOR, MARINE WORKS,
MARINE SERVICES, TRANSPORT DEPT.

Bill S-4

1:9-13,21,27-8

NANAIMO HARBOUR

Commission, application, creation

1:28

Traffic

1:28

See also

Bill S-10

NANAIMO HARBOUR COMMISSIONERS, ACT TO
INCORPORATE

See

Bill S-10

NATIONAL ENERGY BOARD

| | |
|---|----------------|
| Jurisdiction | |
| Increased | 5:15 |
| Licencing | 5:13-4,17,22-3 |
| Pipelines, gas | |
| B.C. | 5:15 |
| Extraprovincial | 5:7-8,12,17-8 |
| Interprovincial | 5:7-8,10,12 |
| Provincial interest | 5:16,18-9 |
| Rates, tolls | 5:18-22 |
| Shipping | 5:11 |
| Transportation, inter-, extraprovincial | 5:16 |
| <i>See also</i> | |
| Bill S-26 | |

NATIONAL ENERGY BOARD ACT

| | |
|-------------------------|--------|
| Definitions, "pipeline" | 5:8,15 |
|-------------------------|--------|

NATIONAL ENERGY BOARD ACT, ACT TO AMEND

| | |
|------------|--|
| <i>See</i> | |
| Bill S-26 | |

NATIONAL HARBOUR BOARD

| | |
|---|-----------|
| Creation, justification | 1:26 |
| Harbour Commission, liaison | 1:27 |
| Jurisdiction | 1:8,11,20 |
| Exemptions | 1:8 |
| Local Harbour Commission, differences re: | |
| jurisdiction of harbour | 1:20 |
| Transport Dept., differences re: juris- | |
| diction of harbour | 1:11 |

NEW BRUNSWICK

| | |
|---|-------|
| Appeal Cases (1954), <i>Winner</i> case, excerpts | 5:9-9 |
|---|-------|

NEWFOUNDLAND

| | |
|---------------------|------|
| Bill S-24, position | 3:46 |
| Commissions, power | 3:52 |

| | |
|--|---|
| NEWFOUNDLAND (Cont'd) | |
| Labrador, development | 3:38-9 |
| Railways, fixed rates, authority | 3:38 |
| Wabush-Carol (Agreement) Act, 1959, discussion, excerpts | 2:22,29; 3:41,42, 46-7; 4:77,82 |
| NORTHERN LAND CO. LTD. | |
| Owners | 2:17,21; 3:41 |
| Qualify, Newfoundland gov't. | 3:61-2 |
| Railway Wabush Lake | |
| Operation costs, percentage | 2:21 |
| Partial owners | 2:15,17-8; 3:41 |
| Property rights | 2:18 |
| Rights, ownership, Wabush Lake, St Lawrence line | 2:10-1 |
| O'BRIEN, JOHN J., Q.C., COUNSEL FOR CAROL LAKE CO. | |
| Bill S-24 | 2:19-30; 3:38-58, 66-7; 4:78-81 |
| OSHAWA COMMISSIONERS ACT, ACT TO AMEND | |
| See | |
| Bill S-5 | |
| OSHAWA HARBOUR | |
| Revenue, expenses, dredging | 1:21-3 |
| Ships, accommodation | 1:21,23 |
| PATILLO, A.S., Q.C., COUNSEL FOR WABUSH LAKE RAILWAY CO. LTD. | |
| Bill S-24 | 2:7-13,16,28; 3: 36-8,42-3,54; 4: 76,81 |

PIPELINES

| | |
|---|---------|
| Interprovincial | 5:12,17 |
| Interprovincial bus service, relationship | 5:9-10 |
| Man., Public Utility Board, regulations | 5:8-9 |
| Sask., Public Utility Board, regulations | 5:8-9 |

QUEBEC

| | |
|---------------------|------|
| Bill S-24, interest | 2:14 |
|---------------------|------|

QUEBEC NORTH SHORE AND LABRADOR RAILWAY CO.

| | |
|--------|-------------|
| Owners | 2:9 |
| Route | 2:8-9; 3:39 |

RAILWAYS

| | |
|--|-----------|
| History, advantage to Canada, examples | 3:44-5,59 |
| Incorporation, by provinces | 2:24-5 |
| Joint through rates, provincial | 3:56 |
| Provincial, federal jurisdiction | 3:54,56 |

REPORTS TO SENATE

| | |
|------------------------------|------|
| Bill C-69, without amendment | 6:37 |
| Bill C-72, without amendment | 7:5 |
| Bill S-4, without amendment | 1:6 |
| Bill S-5, without amendment | 1:6 |
| Bill S-10, without amendment | 1:6 |
| Bill S-24, with amendments | 4:85 |
| Bill S-26, without amendment | 5:6 |

ST LAWRENCE SEAWAY

| | |
|--------------------------|--------|
| Harbours, administration | 1:11-2 |
|--------------------------|--------|

STEAD, GORDON W., ASSISTANT DEP. MIN.,

MARINE, TRANSPORT DEPT.

| | |
|----------|--------|
| Bill S-4 | 1:7-29 |
|----------|--------|

F.C.A.

See

Trans Canada Airlines

FASCHEREAU, PIERRE, SOLICITOR FOR C.N.R.

Bill C-69

6:7-13

TRANS CANADA AIRLINES

Authorization, borrow money

6:8-9

Capital requirements, financing purposes

6:10-2

Financial success

6:21

TRANSPORT AND COMMUNICATIONS STANDING

SENATE COMMITTEE

Letter from Law Clerk and Parliamentary
Counsel

5:7

Motion

... "amended report of sub-committee ...
Bill S-24"

4:81

... "appointed sub-committee, consider
amendments, said Bill ..."

3:33,68

... "amendment ... Clause 2 ... Bill
S-24"

4:71,85

... "copy of Bill to Attorney General
of each province ... Bill S-26"

5:5,22

TRANSPORT DEPT.

Consolidated Revenue Fund

1:22

National Harbour Board, differences re:
jurisdiction of harbour

1:11

VAUGHAN, R.T., ASSISTANT TO PRES., C.N.R.

Bill C-69

6:23

WABUSH IRON CO.

| | |
|-------------------------------|------|
| Royalties, to Mfld. | 2:14 |
| Subsidiaries, wholly owned | 2:17 |
| Wabush Lake, deposits, owners | 2:11 |

WABUSH LAKE, NFLD.

| | |
|---------------------------|------------|
| Ore deposits | 2:8 |
| Development, jobs created | 2:9 |
| Estimated tonnage | 2:11,19 |
| Processing | 2:11-2 |
| Proposed shipping route | 2:11-2 |
| Sales, competition | 2:17; 4:81 |
| Railway, proposed | |
| Charter rights | 2:18 |
| Necessity | 2:9 |
| Operations, control | 2:17 |
| Owners, running rights | 2:15 |
| Rates, control | 3:62-3 |

WABUSH LAKE RAILWAY CO. LTD.

| | |
|--|----------------|
| Contractual obligations | 4:73-4,76-8,80 |
| Iron ore, Wabush Lake, percentage shipped to U.S., proposed | 2:16 |
| Railway, Wabush Lake | |
| Financing, agreement | 2:18 |
| Operations, commencement | 2:22 |
| Rates, proposed | 3:63-4 |
| Running rights | 2:21; 3:56,67 |
| Agreement, Carol Lake Co. | 2:21,25-7 |

See also

Bill S-24

WABUSH LAKE RAILWAY CO. LTD. AND ARNAUD
RAILWAY CO., ACT RESPECTING

See

Bill S-24

| | |
|---|-----------------------|
| WATER | |
| Withdrawal, pollution | 1:24-5 |
| WILLIAMS, WALTER, VICE-PRES., WABUSH LAKE RAILWAY CO. AND ARNAUD RAILWAY CO. | |
| Bill S-24 | 2:11-2,18 |
| WINDSOR HARBOUR COMMISSION | |
| Bill S-4, requested | 1:12 |
| Ojibway, amalgamation | 1:13-4 |
| WINDSOR HARBOUR HARBOUR COMMISSIONERS, ACT TO AMEND | |
| <i>See</i> | |
| Bill S-4 | |
| APPENDIX | |
| Issue no. 7 - Canadian National Railways; Capital budget and estimated income account, 1960 | 7:29-36 |
| WITNESSES | |
| - Denson, Keith, Secretary, Wabush Lake Railway Co. and Arnaud Railway Co. | 2:11,14,17-9,27, 61-2 |
| - Cann, J.L., Project Director, C.N.R. | 7:12-9 |
| - de Billy, Jacques, Q.C., Counsel for Wabush Lake Railway Co. and Arnaud Railway Co. | 2:13-4,18-9 |
| - De Roche, W.E.F., Q.C., Counsel for Wabush Lake Railway Co. and Arnaud Railway Co. | 2:12-7,30; 3:59-60 |
| - Driedger, E.A., Assistant Dep. Min. of Justice | 5:3-15 |
| - Durrell, William H., President, Carol Lake Co. | 2:20 |

WITNESSES (Cont'd)

| | |
|---|---|
| - Gordon, Donald, Pres., C.N.R. | 6:10-23 |
| - Macgillivray, R.R., Assistant Counsel, Law Branch, Transport Dept. | 1:13-20,24-5 |
| - McKinnon, Ian N., Chairman, National Energy Board | 5:15-23 |
| - MacMillan, Norman, Exec. Vice Pres., C.N.R. | 7:7-21 |
| - Manning, W.J., Director, Marine Works, Marine Services, Transport Dept. | 1:9-13,21,27-8 |
| - O'Brien, John L., Q.C., counsel for Carol Lake Co. | 2:19-30; 3:32-58, 66-7; 4:78-81 |
| - Pattillo, A.S., Q.C., Counsel for Wabush Lake Railway Co. Ltd. | 2:7-13,16,28; 3: 36-8,42-3,54; 4: 76,81 |
| - Stead, Gordon W., Assistant Deputy Minister, Marine, Transport Dept. | 1:7-29 |
| - Taschereau, Pierre, Solicitor for C.N.R. | 6:7-13 |
| - Vaughan, R.T., Assistant to Pres., C.N.R. | 6:23 |
| - Williams, Walter, Vice-Pres., Wabush Lake Railway Co. and Arnaud Railway Co. | 2:11-2,18 |

Third Session—Twenty-fourth Parliament
1960

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the

Bill S-4, "An Act to amend the Windsor Harbour
Harbour Commissioners".

Bill S-5, "An Act to incorporate the Oshawa
Commissioners Act",

Bill S-10, "An Act to incorporate the Nanaimo
Harbour Commissioners".

The Honourable Adrian K. Hugessen, Chairman.

THURSDAY, FEBRUARY 4, 1960

WITNESSES:

Department of Transport

Gordon W. Stead, Assistant Deputy Minister, Marine.

W. J. Manning, Director, Marine Works, Marine Services.

R. R. Macgillivray, Assistant Counsel, Law Branch.

REPORTS OF THE COMMITTEE.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

THE STANDING COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable ADRIAN K. HUGESSEN, *Chairman*

The Honourable Senators

| | | |
|-----------------------------------|------------|---------------------------|
| *Aseltine | Gladstone | Molson |
| Baird | Gouin | Monette |
| Beaubien | Grant | Paterson |
| Bishop | Haig | Pearson |
| Blois | Hardy | Power |
| Bouffard | Hayden | Quinn |
| Bradley | Horner | Raymond |
| Brunt | Hugessen | Reid |
| Buchanan | Isnor | Robertson |
| Campbell | Jodoin | Roebuck |
| Connolly (<i>Halifax North</i>) | Kinley | Smith (<i>Queens-</i> |
| Connolly (<i>Ottawa West</i>) | Lambert | <i>Shelburne</i>) |
| Courtemanche | Lefrançois | Smith (<i>Kamloops</i>) |
| Dessureault | *Macdonald | Stambaugh |
| Emerson | McGrand | Veniot |
| Euler | McKeen | Vien |
| Farris | McLean | Woodrow—(50) |
| Gershaw | Méthot | |

50 members
(QUORUM 9)

**Ex officio member.*

ORDERS OF REFERENCE

EXTRACTS from the Minutes of the Proceedings, The Senate, January 28, 1960:—

“Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator Aseltine, that the Bill S-4, intituled: “An Act to amend the Windsor Harbour Commissioners Act”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Emerson, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative.

Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator Haig, P.C., that the Bill S-10, intituled: “An Act to incorporate the Nanaimo Harbour Commissioners”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Haig, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative.

Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator Aseltine, that the Bill S-5, intituled: “An Act to incorporate the Oshawa Harbour Commissioners”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Aseltine, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative.”

J. F. MacNeill,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, February 4, 1960.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11 a.m.

Present: The Honourable Senators:—Aseltine, Beaubien, Blois, Bouffard, Brunt, Buchanan, Connolly (*Halifax North*), Connolly (*Ottawa West*), Des-sureault, Emerson, Gouin, Haig, Horner, Lefrançois, Macdonald, McGrand, McLean, Molson, Pearson, Power, Reid, Smith (*Kamloops*), Stambaugh and Veniot—24.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel.
The official Reporters of the Senate.

In the absence of the Chairman and on motion of the Honourable Senator Brunt, the Honourable Senator Connolly (*Halifax North*) was elected Acting Chairman.

The following Bills were read and considered:—

Bill S-4, "An Act to amend the Windsor Harbour Commissioners Act".

Bill S-5, "An Act to incorporate the Oshawa Harbour Commissioners".

Bill S-10, "An Act to incorporate the Nanaimo Harbour Commissioners".

On motion of the Honourable Senator Brunt, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bills.

The following representatives of the Department of Transport were heard in explanation of the Bills:—

Mr. Gordon W. Stead, Assistant Deputy Minister, Marine.

Mr. W. J. Manning, Director, Marine Works, Marine Services.

Mr. R. R. Macgillivray, Assistant Counsel, Law Branch.

It was resolved to report the Bills without any amendment.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

John A. Hinds,
Assistant Chief Clerk of Committees.

REPORTS OF THE COMMITTEE

THURSDAY, February 4, 1960.

The Standing Committee on Transport and Communications to whom was referred the Bill S-4, intituled: "An Act to amend the Windsor Harbour Commissioners Act", have in obedience to the order of reference of January 28, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

HAROLD CONNOLLY,
Acting Chairman.

THURSDAY, February 4, 1960.

The Standing Committee on Transport and Communications to whom was referred the Bill S-5, intituled: "An Act to incorporate the Oshawa Harbour Commissioners", have in obedience to the order of reference of January 28, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

HAROLD CONNOLLY,
Acting Chairman.

THURSDAY, February 4, 1960.

The Standing Committee on Transport and Communications to whom was referred the Bill S-10, intituled: "An Act to incorporate the Nanaimo Harbour Commissioners", have in obedience to the order of reference of January 28, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

HAROLD CONNOLLY,
Acting Chairman.

THURSDAY, February 4, 1960.

The Standing Committee on Transport and Communications to whom was referred the Bills S-4, "An Act to amend the Windsor Harbour Commissioners Act", Bill S-5, "An Act to incorporate the Oshawa Harbour Commissioners", and Bill S-10, "An Act to incorporate the Nanaimo Harbour Commissioners", recommend that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bills.

All which is respectfully submitted.

HAROLD CONNOLLY,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

OTTAWA, Thursday, February 4, 1960.

The Standing Committee on Transport and Communications, to which was referred Bill S-4, an act to amend the Windsor Harbour Commissioners Act, Bill S-5, an act to incorporate the Oshawa Harbour Commissioners, and Bill S-10, an act to incorporate the Nanaimo Harbour Commissioners, met this day at 11 a.m.

Senator HAROLD CONNOLLY (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Honourable senators, before we get to the details of these three bills there is before the committee the following motion:

That authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the Bill S-4, an Act to amend the Windsor Harbour Commissioners Act, Bill S-5, an Act to incorporate the Oshawa Harbour Commissioners, and Bill S-10, an Act to incorporate the Nanaimo Harbour Commissioners.

On motion of Senator Brunt, seconded by Senator Horner, motion agreed to.

The ACTING CHAIRMAN: We have before us witnesses from the Department of Transport, as follows: Mr. Gordon Stead, Mr. W. J. Manning, Mr. A. K. Laing, Mr. W. F. Elliott and Mr. R. R. Macgillivray.

Senator REID: Mr. Chairman, it might simplify matters if an explanation were given first as to Bills S-5 and S-10, which are similar, although they concern different parts of the country?

The ACTING CHAIRMAN: Does that meet with the wishes of the committee?

Senator BRUNT: Mr. Chairman, I would suggest that we deal with Bill S-4, with respect to the Windsor Harbour, and get it out of the way.

The ACTING CHAIRMAN: Would you care to say a word about Bill S-4, Mr. Stead?

Mr. Gordon W. Stead, Assistant Deputy Minister, Marine:

Mr. Chairman and honourable senators, we are honoured and happy to be here today. As far as I am personally concerned this is my first experience before a committee of this sort in either house, and I trust you will bear with me in what we are about to do.

I gather you would like to deal with the Windsor bill first?

The ACTING CHAIRMAN: Yes, if you please.

Mr. STEAD: I wonder whether the committee would like me to make a general statement about the philosophy behind these harbour commissions, which statement arises out of our reading of your deliberations in the chamber the other day?

The ACTING CHAIRMAN: The committee would like to know why we require these bills to set up harbour commissioners when we have a National Harbour Board in operation.

Mr. STEAD: That is what I had in mind. And following the general statement I would deal with questions such as were asked in the chamber the other day.

Mr. Chairman and honourable senators, the National Harbours Board was created some years ago as a result, I believe, of conditions in some of the more important harbours in the country, which had gotten themselves into financial and administrative difficulties, and I think they were rather heavily indebted to the federal Government at that time. This led to the appointment of a royal commission which produced a report known as the Gibb Report, the recommendations of which were, I believe, that the harbours affected, and those of national significance, should be placed under a national organization, which became the National Harbours Board. The principal harbour that was excepted from these arrangements was Toronto harbour.

Senator REID: And New Westminster.

Mr. STEAD: And New Westminster. Toronto was, I believe, financed by city guarantee and was not involved in federal financing at that time, and preferred to remain out of this system.

Senator MACDONALD: Would you mention the harbours now under the board?

Mr. STEAD: Yes sir.

Senator BRUNT: And when they were brought in.

Mr. STEAD: The National Harbours Board deals with harbours at Halifax, Saint John, Chicoutimi, Three Rivers, Quebec, Montreal, Vancouver and Churchill; it also operates grain elevators, not within National Harbours Board harbours, at Port Colborne and Prescott.

Senator BRUNT: And New Westminster is not under the act?

Mr. STEAD: No sir.

Senator REID: For the definite reason that we were the only port in Canada that built wharves at a cost of half a million dollars and the Government refused to pay for them.

Senator MACDONALD: May I ask if the harbours you have mentioned were all under the National Harbours Board when the report which you have also mentioned was made?

Mr. STEAD: No. I think they were all individual, sir.

Senator MACDONALD: My question should have been, did they all come under the National Harbours Board at the same time?

Mr. STEAD: No. There was one exception, namely Churchill, which was brought in later.

Senator BRUNT: All the rest came in at one time?

Mr. STEAD: That is right, at the beginning.

Senator POWER: May I ask if it is not a fact that the two harbours excluded were excluded because there was a municipal interest, that is, an interest other than the federal Government in them?

Mr. STEAD: I think that is right.

Going on to the next level of harbour commissions, it is the usual practice for the city to donate foreshore property that it has for the use of the harbour commission. So they have some investment. Admittedly, over the years, federal

investment in the harbour certainly becomes the predominant one, but the city has a significant interest in most cases, and it tends to prefer to have local people in charge.

The third level of harbours are those that are operated directly by the Department of Transport. This system works satisfactorily as long as the harbour is a particularly small one and one harbour master and/or a wharfinger who can manage traffic in it. When it gets larger than that we are inclined to favour the initiative of local people who come forward and ask for a commission of their own, so that local management can bring local knowledge and interest to bear on the problems and do the job we did when the harbour was small.

Senator MACDONALD: Are there any harbours which are administered by the department?

Mr. STEAD: Yes. I think there are about 2,400; most of those are individual wharves.

Mr. MANNING: There are 300 public harbours and some 2,000 wharves.

Mr. STEAD: Where there are individual wharves we normally try to have a wharfinger there, or if it is a normal small harbour, a harbour master.

Senator POWER: Are there many operated by the Department of Public Works?

Mr. STEAD: No. The Harbours and Piers Act requires that when a wharf or some other installation is built by the Department of Public Works it is transferred to the Department of Transport for administration.

Senator BRUNT: Would you tell us how many harbours, and what are their names, operated by Harbour Commissions.

Mr. STEAD: Yes, I have a list here. Belleville, Toronto, Hamilton, Windsor, the Lakehead, Winnipeg and St. Boniface—that is a combination—New Westminster, North Fraser, Port Alberni. I think that is nine.

Senator BRUNT: What is the last one?

Mr. STEAD: Port Alberni on the west coast of Vancouver Island.

Senator BRUNT: I take it that the harbour at Victoria is under the Department of Transport?

Mr. STEAD: Yes sir.

Senator HORNER: Winnipeg Harbour would have to do with prairie schooners, I suppose?

Mr. STEAD: It is not very active.

Senator CONNOLLY (*Ottawa West*): I wonder whether you can tell us how many of these 300 harbours administered by the Department of Transport are on the seaway system?

Mr. STEAD: I do not know if we have that precise information available.

Senator CONNOLLY (*Ottawa West*): A rough estimate would be enough.

Mr. MANNING: Twenty-four at the most. That is an approximate figure.

The ACTING CHAIRMAN: These harbours that are under the administration of the National Harbours Board are non-competitive, are they not? They are not permitted to compete one with the other for business?

Mr. STEAD: I imagine that is the philosophy, sir. I would not like to speak for the Harbours Board.

The ACTING CHAIRMAN: Will that apply to these harbours which will be operated—

Mr. STEAD: No. There was a question in your deliberations the other day about that. These rates are set originally by the commissioners, but they are

subject of the approval of the Governor-in-Council, and there must be a consideration of the competitive situation of the port as compared with the need for revenue and the services that are available at the port. It is a judgment coming out of all of these factors which would determine the rates.

The ACTING CHAIRMAN: In point of fact, does the port of Toronto compete with the port of Montreal?

Mr. STEAD: It serves a vastly different area. I would not think there is any close competition.

Senator BRUNT: It would be more competitive with Hamilton, would it not?

Mr. STEAD: Yes, I believe so.

Senator CONNOLLY (*Ottawa West*): May I come back to the question I was asking before, Mr. Chairman, and ask if we can have some examples of the 24 public harbours on the seaway system which are operated by the Department of Transport? I do not necessarily want an exhaustive list.

Mr. STEAD: Just samples?

Senator CONNOLLY (*Ottawa West*): Yes, would you have any?

Mr. STEAD: What about places like Collingwood?

Mr. MANNING: Sorel, Kingston, Cobourg, Whitby—

Senator CONNOLLY (*Ottawa West*): Is Riviere du Loup a harbour?

Mr. MANNING: It is not a public harbour.

Senator BRUNT: Port Credit?

Senator CONNOLLY (*Ottawa West*): Seven Islands?

Mr. MANNING: Port Credit, no. Yes, there is a harbour master at Seven Islands.

Senator POWER: Rimouski?

Mr. MANNING: Yes, and Baie Comeau, Matane, St. Anne des Monts, Gaspé, Charlottetown, Sydney, North Sydney, Lunenburg.

Senator POWER: What makes it a public harbour? How do they become public harbours?

Mr. MANNING: They are proclaimed as such under the Canada Shipping Act by Order-in-Council.

Senator POWER: By Order-in-Council?

Mr. MANNING: Yes, sir.

Senator POWER: For what particular reason?

Mr. MANNING: It is a matter of policing, mostly. You can have a harbour master, and give him some authority. There is always the question of the preference of ships carrying mail and passengers over freighters, and the question of a ship which is unloading being given preference over a ship which is coming in to load.

Senator POWER: The difference is that a public harbour has a harbour master, and the other one has a wharf master whose jurisdiction applies to the wharf only?

Mr. MANNING: To the wharf itself, not to the harbour.

Senator POWER: Are the boundaries of public harbours defined?

Mr. MANNING: Yes, in the Order-in-Council.

Senator POWER: Before they become public harbours there is only authority over the wharves?

Mr. MANNING: That is it.

Senator POWER: There is no question of any governmental authority over what might be called harbour boundaries, harbour limits?

Mr. MANNING: That is correct, sir.

Senator CONNOLLY (*Ottawa West*): When the Department of Transport administers these public harbours do the officials who do this work have much contact with the National Harbours Board? Do the principles that apply in the work of the National Harbours Board apply also to the public harbours administered by the Department of Transport?

Mr. STEAD: Not really, sir, because the situations are really quite different. I am thinking in economic terms right now. The National Harbours Board administers most of the major harbours where there is heavy commercial traffic. On the other hand, there are a lot of small harbours, fishing and small boat harbours, and one way or another they are really not competitive.

Senator CONNOLLY (*Ottawa West*): The Gibb Report was directed principally to these main harbours that deal with foreign traffic. Those other harbours are more concerned with local problems, are they?

Mr. STEAD: That is right, senator.

Senator CONNOLLY (*Ottawa West*): Coasting trade and that sort of thing?

Mr. STEAD: That is right, senator, yes.

The ACTING CHAIRMAN: With the increasing importance of the St. Lawrence Seaway and the consequent increased importance of ports along that Seaway, is it contemplated that eventually these ports will come under the administration of the National Harbours Board?

Mr. STEAD: I am not aware of any present thinking along these lines, Mr. Chairman. These harbour commissions are usually set up on an appeal from the local city council, boards of trade, and that sort of thing. We welcome this initiative but there is really quite a marked difference, with the exception of Toronto and New Westminster, between the level and size of the Harbour Board ports and these others. I would not like to say what will happen in future times with respect to these various ports.

The ACTING CHAIRMAN: I think earlier in your remarks you referred to the Gibb Report. As I recall it that report proposed that local councils should be set up at all these ports which come under the jurisdiction of the National Harbours Board. Are there in fact such local councils set up in the ports of, say, Montreal, Halifax, Quebec City, and Vancouver?

Mr. STEAD: I do not think so. That is a matter for the National Harbour Board management and I do not feel competent to speak for them. There is a Harbours Board with a head office in Ottawa that manages them, but whether they have any consultations at the local level I am not sure.

Senator CONNOLLY (*Ottawa West*): I do not want to be monopolizing the time of the committee but I think what was in the minds of many honourable senators who were interested in this bill and spoke about it in the house the other day, and they did so out of order for the most part, is this: with the development of the Seaway many of these ports that were formerly inland ports may now in effect become ports for the call of foreign ships, and so perhaps in respect of some of those ports they are going to have just as much business as ports on the coasts.

Now, is it going to be necessary to have some standard form of administration to prevent the kind of competition that had developed when the Gibb inquiry was made? Is there likely to be trouble develop in the Seaway because of competition from these various individual ports, one fighting with the other to get traffic? I take the example only of Hamilton and Toronto. Can that kind of thing develop to the disadvantage of trade in the Seaway?

Mr. STEAD: I suppose that is possible. Under the bills we have before us, and similar ones, there is power in the Government to question and, in effect, not to pass schedules of rates if they get into a price war, for example. Our principal interest is not to stifle competition between ports but rather to ensure that the revenues that they would get from the schedule of rates they propose are adequate to their responsibilities.

Senator CONNOLLY (*Ottawa West*): There are eight ports, and of these eight I suppose Halifax, Saint John, Chicoutimi, Three Rivers, Quebec, Toronto are all in one respect or another either in the Seaway or in competition with ports in the Seaway. Then within the Seaway system itself, we have Toronto, Hamilton, Belleville, Windsor and the Lakehead and they are operated in a different way. And then we have also places like Sorel, Kingston, Port Colborne, Whitby, Port Credit, Seven Islands, Rimouski, Baie Comeau, Ste. Anne des Monts, Gaspé and other ports that are administered in a different way. In view of this, is the traffic that uses the Seaway going to run into difficulty and is this the best kind of arrangement to have—different authorities at different places?

Mr. STEAD: Perhaps I can say in reply, Mr. Chairman, that all the harbours administered directly by the Department of Transport operate under one standard set of rules, rates and so forth. As regards the others I think we must balance the advantages of having, let us say, standard rates, standard charges, against the value of having local initiative involved in these things. There is some advantage in setting up a local management that will go out after business and endeavour to play their part in developing the country generally. We have a competitive system in this country and this is one aspect of it, and we are only too happy when initiative is shown and people are willing to give their time and energy to developing their port, and if we enforce a standard set of rules on all of them the local initiative would be stifled, and one has to balance these two desiderata.

Senator REID: Mr. Chairman, can we come back to Bill S-4 now?

Mr. STEAD: This Bill S-4 merely extends the boundaries of the Windsor harbour without altering the principles involved, to take in the area bordering on the municipality of Ojibway.

Senator MACDONALD: Who has asked for this?

Mr. STEAD: This has been requested by the Windsor Harbour Commission.

Senator BRUNT: Do both municipalities favour this amendment?

Mr. STEAD: I think this would refer to the point raised by Senator Connolly, that you would not want competition in an immediate neighbourhood; that there should be one administration serving a given industrial area. I think that is really the principle behind this bill.

Senator REID: Has there been any criticism of this on the part of the municipality of Ojibway?

Mr. STEAD: No; I believe they have concurred.

Senator POWER: Just what authority over the territory described in these boundaries does the Harbour Commission have? I suppose we would have to read the Harbour Commission bill to have the answer?

Mr. STEAD: That is the same as the other bills before you.

Senator BRUNT: We could possibly get that information in discussing the other two bills.

Senator REID: Mr. Chairman, I move the adoption of the bill.

Senator PEARSON: What do the words "ordinary high water" mean, in setting up your boundaries? What is ordinary high water?

Senator CONNOLLY (*Ottawa West*): I hope we get this answer.

Senator BRUNT: It will save us a lot of work if we do.

Mr. MANNING: That varies with local conditions. In some places the courts have established a fixed level for ordinary high water and in other places it is decided locally. There is no set answer.

Senator PEARSON: Supposing there happened to be a flood of water at some particular time, what would happen with the high water mark?

Mr. MANNING: Not the ordinary high water mark.

Senator PEARSON: Would it extend the boundaries of the harbour?

Mr. MANNING: No. Under such conditions, it is not the ordinary high water.

Senator PEARSON: In the next bill it says "high water"; it does not say "ordinary high water".

Mr. MANNING: That is established locally by custom or in some cases by law, by a court ruling.

Mr. MACGILLIVRAY: It is a question of fact. In some instances it has to be established by deciding what the high water has been over a long period of time.

Mr. STEAD: It would not include flood conditions.

Mr. MACGILLIVRAY: Not ordinarily.

Senator MACDONALD: Is this actually an amalgamation of two ports?

Mr. STEAD: No. I don't think Ojibway was organized.

Senator MACDONALD: How is the land being taken over? How is the property taken over by the commission?

Mr. STEAD: There is no property being taken over in the sense of ordinary ownership. It is jurisdiction for the purpose of navigation and shipping.

Senator MACDONALD: And the jurisdiction is in whom?

Mr. STEAD: The harbour commission.

Senator MACDONALD: At Ojibway?

Mr. STEAD: It will be, if this bill is passed.

Senator MACDONALD: Who owns the property now?

Mr. STEAD: It is in private hands.

Senator MACDONALD: And have the arrangements been made with the private owners?

Mr. STEAD: They are not directly concerned in this situation, in that all we are doing, as I understand it, is transferring the constitutional rights inherent in the federal Crown to the harbour commission.

Senator MACDONALD: And the owners of the property have no riparian rights.

Mr. STEAD: The bill does not deny them anything they have now.

Senator BRUNT: They still have all the rights they ever had, is that correct?

Mr. STEAD: That is correct.

Senator MACDONALD: Will this not interfere with the rights they now have?

Mr. STEAD: No, sir.

Senator POWER: Except as provided by section 11 of Bill S-5 where it says the corporation may expropriate or otherwise acquire and hold land. I presume the Government had the right to the land within its boundaries.

Senator MACDONALD: That is what I wanted to know.

Senator POWER: The federal Government would have had that power anyway.

Senator MACDONALD: What I want to know is, is it the intention of the federal Government to expropriate land?

Mr. STEAD: Not particularly. There have been cases when that has happened for legitimate harbour purposes. Any expropriation has to be subject to approval of Governor in Council, but it is confined to harbour purposes, not for general purposes. That is to say, you cannot expropriate just to prevent somebody using his property in a manner that would not interfere with the efficient operation or development of the harbour.

Senator MACDONALD: Did I understand you to say that the present owners will not lose anything by their land being taken over under the National Harbours Board?

Mr. STEAD: Under this harbour commission?

Senator MACDONALD: Yes, under the harbour commission.

Mr. STEAD: They don't lose any right under law, as I understand it, that they now have.

Senator BOUFFARD: Is it not correct to say that if land is to be expropriated the local commission can control the type of work that is going to be done on private property for future development?

Mr. STEAD: I would like to have our law branch representative deal with that point, which is essentially a legal question.

Mr. MACGILLIVRAY: Sirs, I think it should be recognized that these bills do two things: they create a corporation and give it the powers that a corporation must be given under statute, and in addition they delegate to the commission the law-making power that now is Parliament or in the Governor-in-Council under the Canada Shipping Act. So that when boundaries are extended the only effect on the owners of property within those boundaries is that the laws relating to them will now be made by the harbour commissioners subject to approval by the Governor-in-Council, instead of by Order in Council under the Canada Shipping Act. The expropriation power which now exists in the federal government will be passed on to the Harbour Commissioners, so there is no immediate effect from that. The only thing is that if something is to be expropriated it will be by a different body.

Senator BRUNT: The ultimate authority still rests in the Governor-in-Council to approve or disapprove of the bylaws.

Senator POWER: With respect to clause 12, what about the—

Senator BRUNT: Let us deal with Bill S-4.

Senator POWER: We are discussing the powers of these harbour commissions, generally, and clause 12 is a standard clause in all of these. We are asking what the powers of these commissions are, and I am pointing out that under this particular clause the Corporation may regulate and control the use and development of all land and other property on the water-front within the limits of the harbour and all docks, wharves, buildings and equipment erected or used in connection therewith. Will that prevent anybody putting up the kind of building he wants to put up?

Mr. STEAD: What has happened so far as I am aware is that there are no bylaws to that effect in these harbour commissions. I gather that they have the power to create bylaws to that effect, but they are, again, subject to the approval and concurrence of the Governor-in-Council.

Senator POWER: Are they?

Mr. STEAD: What actually happens is that the harbour commission is consulted informally, and that seems to have worked satisfactorily so far.

Senator POWER: I am suggesting that the corporation may regulate and control the use and development—and I am taking it that that refers to private land belonging to some private concern—under this act (and I suppose under all these harbour acts, because they are standard) and the corporation can prevent a private owner from putting up the kind of building he wants to, without any reference, as far as I can see, to an Order-in-Council.

Mr. MACGILLIVRAY: But this states what their powers are. Those powers must be exercised by bylaw under clause 13, and the bylaw would be subject to the approval of the Governor-in-Council. In addition, this power only extends within the limits of the harbour—that is, to ordinary high water.

Senator POWER: Within the boundaries as defined in clause 4?

Mr. MACGILLIVRAY: Yes, and they must be carrying out a function relating to navigation and shipping.

Senator POWER: Yes, but does it not give them powers which are not normally within the right of the federal Government?

Mr. STEAD: No, sir.

Senator REID: They cannot do anything without the authority of Ottawa.

Mr. STEAD: The constitutional point, as I understand it, is that the Parliament of Canada cannot transfer powers to a body such as this that it has not got itself in the first place.

Senator POWER: Normally, would the federal Government say to a man who has property on the water-front: "You must erect such and such a building, or have such and such a construction there"?

Mr. STEAD: No, sir, unless there was some interference with navigation or shipping. Furthermore, I might add that there is a clause in these bills requiring these bylaws to be presented to the city council. There is a waiting period of 10 days in here during which, if the city council—or, in other words, the shore authority, shall I say?—has an objection, it can be registered and considered before the bylaw is submitted to Ottawa for the approval of the Governor-in-Council.

Senator POWER: I would say that the bylaw they would make in the case of Windsor would be simply a copy of clause 5 of the act, would it not?

Senator BRUNT: No, if you want to expropriate land, that would require—

Senator POWER: This is not expropriation; it is regulation and control of the use and development of land under private ownership. I want to know just what powers the federal Government itself has to delegate that power to the harbour commission.

Senator CONNOLLY (*Ottawa West*): Without expropriation?

Senator POWER: Yes. There is no question of expropriation.

Senator BOUFFARD: It does not have to be approved by the Governor-in-Council at all. It says:

"... the corporation may regulate and control the use and development of all land and other property on the water-front within the limits of the harbour and all docks, wharves, buildings, and equipment . . ."

It is not necessary to have that approved by the Governor-in-Council as it is under clause 13.

Senator CONNOLLY (*Ottawa West*): I think the difference between clauses 12 and 13 is that clause 12 gives the power, and clause 13 gives the method by which the power is exercised. But, something still bothers me about this. It seems to me that there is more control over property being taken as a result of these acts than would otherwise be the case. You have not in this, for example, the situation where you have a harbour that existed at the time

of Confederation. These harbours are especially provided for. This is a new harbour. Now, you are defining a certain limit, and you are saying that within that limit the owner of the riparian right, and, indeed, all water rights, will be governed by bylaws made pursuant to these special acts, and I think there is a delimitation of the right an owner may have had before this act was passed. I think Senator Bouffard and Senator Power have a point there which seems to be escaping us.

Mr. MACGILLIVRAY: I think it is correct to say, sir, that before the act is passed there is not any legislation empowering anyone to direct those people as to how they may or may not use their property. With the passage of this they will be subject to additional controls that will be imposed by bylaw under clause 13. I think that is correct. You mentioned, sir, an interference with riparian rights. I do not think there is anything in the bill, or in any of the acts, that would take away any riparian rights that an owner may have in having access to the water. If he is denied his access to the water he would have a right of recompense against the person denying him that right, whether it is the Crown or the Harbour Commissioners or the private owner of the water-lot facing his property.

Senator POWER: He could be limited in so far as the development of his property is concerned.

Mr. MACGILLIVRAY: Well he could under this, if he is denied access to the water, but only to the extent that his property is within the limits of the harbour. His use of it will be controlled to the extent that control is necessary in the interests of governing the harbour with respect to matters of navigation and shipping. If he decided to build a summerhouse in a certain area where the Harbour Commissioners preferred to see a wharf I am sure if he stayed above the high water level he is quite all right.

Senator BOUFFARD: Anyway, that is a control. It is a control of the rights which he had in respect to the use of his property, and that can be done without expropriation and without compensation, and without the passage of a bylaw.

Mr. MACGILLIVRAY: No, I think it requires a bylaw.

Senator BOUFFARD: Why not make it very clear, then?

Mr. MACGILLIVRAY: It says in subsection (1) "Subject to this act".

Senator GOUIN: Mr. Chairman, I would like to refer to something that the Montreal Harbour Commissioners did, and they were in existence at the time of Confederation. I was the owner of a small property at Longue Pointe. In a certain way we were not really deprived of our right of access but, as you know, they built what they call the "Harbour Commissioners Railway" in front of all this land. We can pass over the railway or some day they might make some kind of a little tunnel. But it makes all the difference in the world for a country house or summer home. The presence of the railway is far from being an attraction, and in such a case I would submit we are deprived, at least to some extent, of our right of access.

Mr. MACGILLIVRAY: My point is that these harbour commissions will be given powers under this legislation but these powers will not render a person any more liable to being deprived of access to the water and it will not take away any rights which he might previously have had to recompense if he were denied access to the water.

Senator GOUIN: The fact is that the railway line belongs to the Crown, if I remember correctly.

Mr. MACGILLIVRAY: Yes.

Senator GOUIN: And the lot on the waterfront could belong to me, and logically I would think it might be necessary to proceed by way of expropriation if the railway wanted to construct a line in front of my property. I think I would be entitled to some indemnity. I am not claiming anything and I do not feel like claiming anything, but I just wanted to give a concrete example.

Senator CONNOLLY (*Ottawa West*): What about the case of a person who has a wharf on which he is conducting a business in one of the areas that is taken over, and the jurisdiction is now conferred by legislation like this to a local harbour board? Let us say that the harbour board decides it is going to make some installations there. The Navigable Waters Protection Act really does not govern the Crown at all; I think the Crown is excluded from the provisions of that act. What is the practice in respect of cases like that? Is compensation paid to the owner who might have acquired water rights over the years and might have a water lot which he has bought from the Crown? What do you do when the limits of a harbour are extended in a case like that?

Mr. MACGILLIVRAY: In the first place I do not think any person acquires rights over the surface of the water. The surface of the water is a highway.

Senator CONNOLLY (*Ottawa West*): That is right.

Mr. MACGILLIVRAY: And everyone has a right of navigation over that water. Therefore, no person, even if he purchases a water lot underlying the water, acquires any right over the surface or any part of the water. If he wishes to build on that water lot he must get approval under the Navigable Waters Protection Act. So must the harbour commissions, according to this bill. So they have no rights. The only rights I can think of, coming within this, is the right of riparian owner to have access to the water, and whenever these are interfered with the owner has a right of compensation to the extent that he has suffered damage.

Senator BRUNT: What about the right to withdraw water? Is that interfered with?

Senator GOUIN: Do you know anything about the *Tetreau vs. Harbour Commissioners of Montreal* case which was finally decided by the Privy Council? It was pleaded before the courts and I do not know what finally happened.

Mr. MACGILLIVRAY: I am not familiar with it, sir.

Senator GOUIN: Because that covered the precise question.

Senator MACDONALD: Could one of the witnesses give us an idea of the extent of the water frontage that is now being taken over under the provisions of this act?

Senator BRUNT: The length?

Senator MACDONALD: Yes.

Senator BRUNT: Two miles.

Senator MACDONALD: That is correct, is it? It means that two miles of water frontage is being taken over?

Mr. STEAD: It is defined in terms of water frontage on the land side, and the international boundary in the centre of the river and lines at the ends at right angles to the shore. It moves one of these lines down two miles.

Senator MACDONALD: I just wanted to get some idea of the water frontage that is being taken over. As I understand what has been said, it is that the

people who own these two miles are not losing any of their rights which they now have? They will not lose those rights with the passing of this legislation?

Mr. MACGILLIVRAY: I could agree, sir, that this act does not take away any rights. It makes them subject to new legislation that will affect them but it does not take away any rights at the moment.

Senator MACDONALD: Previously there was no one to enforce the right that the Crown had to these lands, to this water frontage?

Mr. STEAD: Well, the Parliament of Canada could have legislated, as the Harbour Commission will be able to when this bill passes.

Senator MACDONALD: But it has not done so?

Mr. STEAD: No, sir.

Senator MACDONALD: By passing this bill we give authority to the Commission over this land and over the water frontage, which was in the Crown previously, but no department had authority to enforce the rights. Is that right?

Mr. STEAD: I am sorry, I did not hear the end of your question.

Senator MACDONALD: Previously there was the power in Parliament, from what you said—

Mr. STEAD: Yes.

Senator MACDONALD: —to enforce certain rights.

Mr. STEAD: To legislate. I don't know whether I am making up a silly example but if the Parliament of Canada chose to legislate that you could not put up a brown building on the shore because it interfered with navigation, that was a power that the Parliament of Canada always had and that power is now being transferred.

Senator MACDONALD: But Parliament never did anything about it.

Mr. STEAD: No, but with the development of harbours of this nature there is presumably some advantage in making provision for the orderly development of these harbours. It is therefore contemplated that on these legislative powers being transferred, some reasonable use will be made of them in the interests of navigation and shipping.

Senator POWER: You can only get into that field in the interests of navigation, otherwise you are getting into the matter of property and civil rights.

Mr. STEAD: That is right.

Mr. MACGILLIVRAY: I think it is of interest to note that of the commissions we have now none have passed a bylaw which interferes with the right of a person to develop his own property as he wishes.

Senator MACDONALD: But is there power vested in the Commission?

Senator POWER: They are getting the right now.

Mr. MACGILLIVRAY: Yes.

Senator MACDONALD: They are getting the right to control this land to the extent they could prevent an owner from putting up a certain building.

Mr. MACGILLIVRAY: If it was to be put up within the limits of the harbour yes.

Senator REID: That is a debatable point. I always understood that harbours could not interfere with the rights of owners of private land at all, that it was a provincial matter; but that if a man ran a wharf out into the water they could remove the wharf. But they had no rights with respect to the land at all.

Senator BOUFFARD: I would say that your remarks go pretty far in view of the fact that section 12 of the bill provides, "Subject to this Act, the corporation may regulate and control the use and development of all land and other property on the water-front. . ."

Senator POWER: That same provision is in the Windsor Harbour Commission act.

Senator MACDONALD: It is not a question of expropriation, it is a question of regulation and control.

Mr. STEAD: Legislation.

Senator CONNOLLY (*Ottawa West*): They could, for example, by by-law say that there should be no building built within a certain distance of the waterfront.

Mr. MACGILLIVRAY: Their powers only extend to ordinary high water mark.

Senator POWER: A commission might conceivably say that it anticipates putting up a 20-storey office building at some future date, or that it wants to build a wharf there, and does not want to have to expropriate expensive property when we come around to do it at a cost of millions of dollars. I would like to know if they can do that?

Mr. MACGILLIVRAY: I think so. My own view is that their powers are confined entirely within the limits of the harbour and any by-law that they may purport to make would not affect land above the high water mark and would be ultra vires if they sought to make it applicable.

Senator POWER: Then you would have to have an interpretation of the word "waterfront". What is the waterfront?

Senator BRUNT: You go back to the ordinary high water mark, do you?

Senator REID: Is it not true that the authority of this commission goes only to the high water mark, it does not go beyond on the land above it?

Mr. MACGILLIVRAY: I think you are forced to that interpretation, because the Parliament of Canada can only delegate powers relating to navigation and shipping.

Senator REID: I would say so, yes. Their power only goes to the high water mark.

Senator WALL: Section 4 of Bill S-5 describes the extent of the harbour, confining it to the high water mark of Lake Ontario. However in the last paragraph of that description I read, "And all water-front property, wharves, piers, docks and so forth. . ." What does that mean, all water-front property?

Mr. MACGILLIVRAY: Mr. Chairman, I had no hand in drafting the bill.

Senator WALL: But that is the point.

Mr. MACGILLIVRAY: It follows the wording that has been in these bills since 1911.

Senator WALL: Let us assume that I have in Windsor, which I do not, water-front property 200 feet long, bordering the river, and 800 or 900 feet deep. According to the description of the harbour that water-front property which I have is now part of the harbour, according to the section, is it not?

Mr. MACGILLIVRAY: I think, Senator Wall, that you are forced to the interpretation that water-front property can only mean the portion that is within the area up to the ordinary high water mark, otherwise Parliament would be legislating on matters that have nothing to do with navigation and shipping.

Senator CONNOLLY (*Ottawa West*): Then the point is if they want to use land on the land side above the high water mark they can neither impose any

regulation or restrictions governing that land, and if they want to use that land they must expropriate it or acquire it otherwise.

Mr. MACGILLIVRAY: In Hamilton the Harbour Commission wanted to use their own office building a block away from the harbour and they were able to expropriate the property, but they could not make their bylaws effective on that property, such as the bylaws governing the conduct of people on their wharves.

Senator PEARSON: In the case of a property that is now being used right up to the high water mark, what would happen if they were to build a wharf right across that property and prevent the owners having access to the water? I am thinking possibly of a resort hotel now.

Mr. MACGILLIVRAY: If a wharf is built in a situation like that, denying a person his access to the water, he has his ordinary rights which still exist, and which are not at all altered by this bill—his right to compensation if he is denied access to the water, which is the riparian owner's privilege.

The ACTING CHAIRMAN: Are there any further questions? What is your pleasure with Bill S-4?

Senator HORNER: I move that we adopt the bill.

The ACTING CHAIRMAN: Without amendment?

Hon. SENATORS: Yes.

The ACTING CHAIRMAN: Carried.

Now we will deal with Bills S-5 and S-10, which are identical bills.

Mr. STEAD: Apart from geographical differences they are identical.

The ACTING CHAIRMAN: And they are exactly the same as other bills passed in previous years?

Senator BRUNT: Mr. Chairman, I would like to ask some questions that were raised when we were discussing the Oshawa Harbour Commission bill on second reading in the Senate. Am I in order to proceed, Mr. Chairman?

The ACTING CHAIRMAN: Yes.

Senator BRUNT: The first question that was raised was, on what basis is it decided that certain harbours will be under the National Harbours Board and others under a local Harbour Commission?

Mr. STEAD: I think I covered that in my earlier statement that the harbours under the National Harbours Board were selected at the time the organization was set up as a result of the conditions of the day and the recommendations of the Gibb Report. One was added since, Churchill, where there is no significant local authority, and I suppose it was deemed to be in the national interest that this port be developed under National Harbours Board administration. Otherwise we prefer to have local management, if we can.

Senator BRUNT: You do not select any harbours for a local harbour commission. They have to come to you?

Mr. STEAD: Yes, otherwise, if we were to set it up the administration would have no local steam behind it.

Senator BRUNT: So the department does not select a harbour and say you have to have a local commission there?

Mr. STEAD: No, sir, we do not impose them.

Senator MACDONALD: So the word "national" has no significance?

Mr. STEAD: It was one of the factors, I think, in selecting the original group of harbours. The fact that it has "national" in its title probably relates to the fact that its operations are country-wide.

Senator MACDONALD: But some of the other boards you mention also have operations which are country-wide.

Mr. STEAD: I was thinking of Toronto as the one you might have in mind. It is of clearly national significance, but it did not fall within the other category that had the determining effect on the selection of harbours at the beginning because its financial affairs were in order and they preferred to retain local control.

Senator MACDONALD: What about Prince Rupert?

Mr. STEAD: That is a public harbour under the Department of Transport.

Senator MACDONALD: It is not a national harbour?

Mr. STEAD: No, sir.

Senator BRUNT: The next question was, what size ships now are able to enter the Oshawa harbour?

Mr. STEAD: The governing depth is 21 feet of water below datum, and datum is an engineering term for base level that is used in thinking about these things throughout the lakes, but in actual fact there are two or more feet of depth above that level for ships.

Senator BRUNT: That would be up to 19 feet?

Mr. STEAD: No, 21 feet, plus two feet that normally exists over datum, and sometimes more than two feet over datum, so you would have 23 or more feet actual depth. Now, you have to allow an additional amount under the ship's keel.

Senator BRUNT: Yes, 18 inches under the keel.

Mr. STEAD: Yes.

Senator MACDONALD: If I may interrupt: who is going to pay for the deepening of the harbour?

Mr. STEAD: If it is deepened?

Senator MACDONALD: Yes, if it is deepened.

Mr. STEAD: That is a matter of Government policy when the occasion arises to consider deepening; if it is done by the federal Government, it would be done by the Department of Public Works.

Senator MACDONALD: So in the case of all national harbours, commission harbours and public harbours, is the cost of dredging always borne by the dominion Government?

Mr. STEAD: I think that is true—capital dredging.

Mr. MANNING: In some cases of national harbours, the Harbours Board will pay for the dredging. The Department of Transport has to look after the dredging of the main channel of access into the harbour; if it is a company-owned wharf, the company would have to pay for the dredging of its berth; if it is a public wharf, it is paid for by the Harbours Board or the Department of Public Works, as the case may be.

Senator MACDONALD: And in the case of a harbour under the commission . . . ?

Mr. MANNING: The Department of Public Works would do the dredging of the approach channel and the public wharf in the harbour. If it is a private wharf with a berth, the company owning that private wharf would have to pay for the dredging at its own berth.

Senator REID: The same thing would apply here, as under the National Harbours Board—the Government would do the main dredging of the channel and industry would contribute the balance?

Mr. MANNING: Yes—if the harbour can afford it, it will pay for its own dredging.

Senator POWER: But in the case of a special harbour, such as at Oshawa, I take it they get the best of two worlds: the National Harbours, as a rule, pay for the dredging within the limits of the harbour, except for the main channel. Whereas, in the case of the Oshawa harbour, which would not have as much revenue as, say, the Montreal port, it would have a very good excuse for asking the Department of Public Works to dredge the harbour for them.

Senator REID: It depends on their political pull.

Senator POWER: Is that right, Mr. Stead?

Mr. STEAD: We try to have it depend on the economic viability of the harbour.

Senator BRUNT: And the extent of the cost.

Mr. STEAD: Yes, it relates to the cost. These things have to be decided on their merits in the general national interest.

Senator POWER: What revenue will the Oshawa harbour have? The figure of \$18,000 was mentioned, if I remember correctly.

Mr. STEAD: I think that is the figure.

Senator POWER: If that is all the revenue they will get, they won't do much dredging with that.

Mr. STEAD: No, they would not be expected to. These revenues that the Department of Transport now get go into the Consolidated Revenue Fund when the ports are under our management, and are transferred together with the administration of the assets that earn them, to the Harbour Commission, and they are expected to live off the revenue that is hereby produced.

This brings me back to the point I made earlier, that where a port is exceedingly small, and there is only a necessity for a harbour manager and/or a wharfinger, it does not pay to set up an administrative structure with the costs of offices and so on. That is borne in the national interest by the federal Government. Then when the harbour gets big enough and has enough revenue to cover a small operating budget, that will permit local control, we are happy to see that happen. We transfer the revenue we have been getting to the harbour commission.

Senator POWER: I think I am right in that figure of \$18,000 revenue for a wharf . . . ?

Mr. STEAD: It may be for various things, for wharfage, harbour dues and the like; the whole lot is transferred to the harbour commission.

Senator POWER: That would seem to be the only revenue that is going to come to this harbour commission.

Mr. STEAD: To start with.

Senator POWER: That is the only revenue they will have for this year or next year.

Mr. STEAD: That is correct.

Senator POWER: So they can't go very far on \$18,000, if they are going to hire themselves a harbour master and have a staff.

Mr. STEAD: They would not require a big staff at first. We have found that figure is adequate to get a small harbour started. If it has potential for growth, the revenues will grow too, but we would not expect them to make any capital improvement out of revenue of that scale.

Senator POWER: Eventually they may get themselves into the same jam as the old harbours got themselves, and they get deeper in debt.

Mr. STEAD: The act does require that the harbour commission report on its financial condition to the Minister of Transport; we are therefore in a

position to examine the reports as they come in and to query them. We find in actual practice that most of the harbour commissions are happy to have somebody raise questions that they may not have thought of. So, there is an opportunity for control.

I don't know that this has happened, but if a harbour commission came forward with a request for federal expenditure through the Department of Public Works for dredging or for other structures, and the Government felt that they were not helping themselves enough, they could make approval conditional on raising rates to a level similar to neighbouring harbours. There is an element of control by which one can avoid individual harbour commissions getting in too deep. We are in a position to know what is going on, put it that way.

Senator REID: I think New Westminster harbour is the only harbour in Canada that has kept itself free of debt. I say that without fear of successful contradiction.

Senator BRUNT: Do you mean to say that the Toronto harbour does not pay its debts?

Senator REID: You should examine Vancouver and Montreal. Montreal is the only port that has the Department of Transport doing dredging in the main channel . . .

THE ACTING CHAIRMAN: Gentlemen, let us have one speaker at a time.

Senator REID: May I ask, Mr. Chairman, whether the two bills before us for the establishment of harbour commissioners are similar to other bills for that purpose?

Mr. STEAD: Yes, they are similar to bills that have been passed in the last few years; they follow a pattern.

Senator BRUNT: May I continue with my questions? The next question that was raised in the debate on this bill was: what size ships can enter the Oshawa harbour when the harbour is completed?

Mr. STEAD: Well, Mr. Chairman, this is, I suppose, a matter for the future. I am not quite sure that I know when a harbour is completed, in the sense that as traffic grows the whole economy in the area changes; this obviously alters the requirements. The practice is when the local commission, or other authority if there is no commission, requests improvements we examine the potential traffic they claim and see if the expenditure involved is justified. That is a matter of general policy that comes up periodically as requests are made.

Senator MACDONALD: Is it the intention that this harbour will be deep enough so that ocean-going vessels will be able to enter there?

Mr. STEAD: That is a matter that would be judged on the merits of the particular proposal. At the moment I think the traffic into Oshawa, for example, is largely governed by the depth available at the port of origin. There is a lot of local coal traffic, and that sort of thing. The depth at Oshawa will not be the governing factor in that case.

If some significant industry that had overseas connections were contemplating moving into the Oshawa area, and the traffic thereby generated would justify the expense of dredging, then I am sure the Department of Public Works would give consideration to it.

Senator BRUNT: The next question is a double-barrelled one, and I think you have answered the first part of it. Are all harbour rates fixed by the local commissioners, and if so, on what basis?

Mr. STEAD: Yes, I believe, senator, I did endeavour to answer that at the beginning. They have to consider, in recommending rates which have to be approved by the Governor-in-Council, their competitive position, the need for revenue, the facilities that are offered, and so forth. It would be a complex of the factors which would enter into their recommendations.

Senator MACDONALD: So that the department has the last word?

Mr. STEAD: The Governor-in-Council, on the recommendation of the department, can approve or disapprove. If it was constrained to disapprove what I think, in fact, happens is that we would discuss it with the commission. We are not in the habit of taking arbitrary action on these things.

Senator BRUNT: There was some doubt expressed in the debate in the Senate as to under which clause of the bill the rates are set. Are they set under clause 18 of this bill, or under clause 13 (1) (h)?

Mr. STEAD: The answer is Yes with respect to subparagraph (h). The other clause, to our knowledge not having been used—that is, clause 18—is only there in the event that the Harbour Commissioners choose to have some rates on an *ad valorem* basis, and clause 18 defines what is meant by “*ad valorem*”, that is the same definition as applies in the Customs Act. To my knowledge it has never been used.

Senator BRUNT: There is one question I asked to which I did not get an answer, and I will bring it up again. Suppose somebody bordering on the harbour has the right to withdraw water and that right is interfered with; is there any provision for compensation?

Mr. MACGILLIVRAY: I must say it is something I have not considered. Usually, withdrawals of water—this being within boundary waters the Boundary Waters Treaty applies. I do not think it has ever been a practice for anybody who wants to withdraw water from Lake Ontario to come to any authority in the federal Government for permission to do so.

Senator BRUNT: Let us take the Winnipeg Harbour. That is not one which is involved in—

Mr. MACGILLIVRAY: No. I must say I do not think they are under any obligation to come for permission to do so. If they are withdrawing water, and that right is interfered with, it would only be interfered with by physically interrupting them, and I presume they would be entitled to compensation for that.

Senator REID: You are thinking of the provincial Government having the right to withdraw water, and not the federal Government?

Senator CONNOLLY (*Ottawa West*): I hate to raise this, but what you have suggested makes me think about the requirements in Chicago where they want to withdraw additional quantities of water for the canal and they are prevented from doing so, apparently, by the treaty, which they would like to get revised. There is nothing compelling or requiring a municipality, or any other authority in Canada, to apply for permission before it takes water out of the Seaway system?

Mr. MACGILLIVRAY: There is a distinction here. Chicago is taking it from the Great Lakes and putting it into a different watershed. The intent of the Boundary Waters Treaty is to prevent that sort of thing. I am not too familiar with the treaty, but I know there is a provision in it whereby small users of water are not to be interfered with—that is, people who take it for domestic and such other purposes. This does become of interest to us within the Welland Canal where navigation can be affected if people draw off too much water, and it can also affect the power in the Niagara River.

Senator CONNOLLY (*Ottawa West*): And there are restrictions on that?

Mr. MACGILLIVRAY: Yes, there are restrictions in the Welland Canal and the Niagara River.

Mr. STEAD: Many industrial users would be taking the water out for cooling purposes, and other similar purposes, and putting it back in the same watershed so that the navigation and power potential in the long run would not be significantly affected.

Senator CONNOLLY (*Ottawa West*): I have one other point on this question of withdrawal and re-entry of water; what about sewage disposal, and that kind of thing?

Mr. MACGILLIVRAY: Pollution? I think the Government of the day several years ago made it clear that they felt that Parliament has no legislative power in regard to pollution, as such. The only provisions with respect to pollution that we have in federal legislation, as far as I know, are those, that are contained in the Canada Shipping Act prohibiting pollution from ships.

Senator BRUNT: Yes, the discharge of oil.

Mr. MACGILLIVRAY: I think the only control we would have over sewage would be to the extent that the Crown, or the commissioners, own the waterlot over which they wish to run out their sewage pipe, and that would be a proprietary control.

Senator CONNOLLY (*Ottawa West*): Is there a pollution problem anywhere on the Seaway?

Mr. STEAD: Yes, I think you can say there is. We have had complaints about garbage disposal, about ships throwing out garbage, and that sort of thing. It is being looked into by the International Joint Commission. The Department of National Health and Welfare, and the Department of Agriculture, the Department of Transport and others are assisting. The Department of Agriculture is concerned with the prevention of contagious animal diseases coming into the country. Owing to the problem of jurisdiction this is all a long and difficult process.

Senator MOLSON: The whole of the St. Lawrence River is concerned with that problem.

Senator BRUNT: Does the Government guarantee in any way the payment of debentures that are issued by the local harbour commissioners?

Mr. STEAD: There is nothing in the bill which would cover that point. This would be covered as a matter of policy in the individual case. At the moment I do not think there are any.

Senator BRUNT: Does the Harbour Commission pay municipal taxes on its lands and buildings?

Mr. STEAD: Not to my knowledge.

Senator BRUNT: Do they enjoy privileges such as the use of roads, police protection and fire protection?

Mr. STEAD: I believe so, sir, just as any other corporation would.

Senator POWER: In answer to Senator Brunt I know that there is a law suit going on between the Quebec Harbour Commissioners and the federal Government at the moment. The city of Quebec at one time charged them \$12,000 per annum for the use of water, and suddenly they boosted that to \$140,000 a year.

Senator BRUNT: Who were they mad at?

Senator POWER: The case has been going on for five or six years, and I do not know just what will happen.

Senator BRUNT: I have one last question with respect to the Oshawa Bill. In view of the opening of the Seaway has the Department of Transport given any thought to the making of a survey of all harbours and a reclassification of all harbours?

Mr. STEAD: Mr. Chairman, reading that question in the context of your debate the other day I take it you are asking whether any thought has been given to having them all under the jurisdiction of the National Harbours Board. I think that has been covered, generally, by what has been said throughout this meeting, and the answer is; No, sir.

Senator POWER: I would like to make an observation here. You, Mr. Chairman, and I, know very well that one of the excuses given for the creation of the National Harbours Board was the many proven extravagances of the local harbour commissions, and there was a desire to avoid what might be called promotional competition, perhaps rather than a competition in rates. For instance, there was a great rivalry between the ports on the eastern coast of Nova Scotia and those on the St. Lawrence, and even between those on the St. Lawrence. There was a great deal of rivalry at one time between Quebec and Montreal, and fairly large sums of money was spent by individual harbour commissions to that end, they being pushed largely by the local authorities who naturally wanted better and more efficient harbours.

These alleged extravagances of these harbour boards—because of the fact that they had issued bonds and debentures, and what have you, with the guarantee of the federal Government—forced the Government of the time to take these over.

Are we now beginning to create the same kind of condition by these individual boards? They will start competing and they will require money. They will bring influence to bear in order to get guarantees of their bonds. They will do all the same kind of thing that the old harbour boards were accused of doing. I am just wondering if as a matter of policy some further consideration should be given to the setting up of a controlling board over these smaller ones.

Senator CONNOLLY (*Ottawa West*): In the Seaway?

Senator BRUNT: A sort of regulatory board?

Senator POWER: Yes, because the others in the opinion of the Government of the day, ran wild.

Senator CONNOLLY (*Ottawa West*): Particularly within the Seaway, I suppose.

Mr. STEAD: The functions of the regulatory board that you have in mind are really exercised by the department, as we get these annual reports, and we can see when they are running wild in any area. My own feeling is that the Harbour Commission has a legitimate right to advertise its own facilities. So often the degree to which the facilities that are in existence, or might come into existence, in a harbour area depend on the shore industry behind that harbour, and therefore the basic function of encouraging the growth of the community lies in an industrial commissioner who is usually under the wing of a city council.

Senator POWER: They will pass on the resolutions necessary, and bring all the pressure to bear to extend industry in their own locality, you can be sure about that.

Mr. STEAD: If the industrial commission function were undertaken by them the department would tend to think it is not one to be undertaken by the Harbour Commission, which has a legitimate interest in advertising existing harbour facilities; and some of them are doing so; but we do have the means of checking it.

Senator MOLSON: Mr. Chairman in the course of getting the reports of the Harbour Commission, supposing a commission were contemplating a large capital expenditure, would that show up in any way in the information that would come through the department? Mr. Stead spoke of their running wild. Were you speaking of revenue or of capital expenditure?

Mr. STEAD: In actual practice, the harbour commissions we have now, with one or two exceptions, possibly, are on such a scale that they do not usually contemplate large capital expenditures; they are normally fairly small. As the other senator pointed out earlier, they start out at \$18,000 or perhaps \$30,000, something in that neighbourhood. Harbour commissions by and large are not very profitable. They are a service to the area in which they exist, and the commissions are normally constrained about raising their rates to enable them to finance anything at all elaborate, by the effects of competition from other harbours in the neighbourhood, and they are on the horns of a dilemma, and we hope that the dilemma brings about a balanced judgment on the part of the commission.

Senator MOLSON: But there is no control in the case of capital expenditures?

Mr. STEAD: Yes, there is. The bill does not allow them to undertake large capital expenditures; there is a clause in the bill to that effect. What in fact usually happens is that capital expenditures would be financed by bond issues which are subject to the approval of the Governor General.

The CHAIRMAN: Getting back to the question I asked originally, and apropos of what Senator Power just said, we have the National Harbours Board administering one group of ports, and the Harbour Commission another group. What is the conflict between those two great agencies?

Mr. MANNING: They both answer to the Minister of Transport.

The CHAIRMAN: But the National Harbours Board is a separate organization.

Mr. STEAD: In fact, we have a satisfactory working liaison with the National Harbours Board. I am not aware of any cases of direct conflict. I am not quite sure what you have in mind, what sort of conflict?

The ACTING CHAIRMAN: You cannot predict when any of this group of parts, which your department administers, will become part of the National Harbours Board's setup, if ever.

Mr. STEAD: I think this would depend on future development.

The ACTING CHAIRMAN: Is it possible that one day the National Harbours Board will administer all ports in Canada?

Mr. STEAD: I think in many cases there would be local objection. The tendency is for the local community to want to have a voice in governing their own affairs.

The ACTING CHAIRMAN: But there were local objections before in other areas, which were overridden by Canadian authority.

Senator POWER: If I may speak in support of that statement, one of the reasons for the creation of the National Harbours Board was to do away with pressure from the local harbour commissions wherein there was local representation.

The ACTING CHAIRMAN: That is right.

Senator POWER: One of the reasons for creating this is that they desire to have local representation, just the opposite. I would not attempt to give any judgment on the wisdom of this.

Mr. STEAD: We are never free from pressure.

Senator BRUNT: Could I ask three or four short questions that were raised when Bill S-10, to incorporate the Nanaimo Harbour Commissioners was presented in the house? Mr. Stead, did you bring up with you a statement as to the volume of traffic during the past ten years with respect to passenger cars, trucks and trailers at Nanaimo?

Mr. STEAD: No, sir. I was aware of that question but we have not got that information. The bulk of the traffic through Nanaimo is really highway traffic. In other words, it is a highway link. The Black Ball and C.P.R. Companies run car ferries back and forth and they are really a part of the highway system. Both of these companies operate into their own wharves, so we have no statistics although we do know there have been significant increases recently.

Senator BRUNT: Another question was: Why wasn't an application made earlier for the setting up of a commission for the Nanaimo Harbour?

Mr. STEAD: I think actually there have been discussions going back some time. The city of Nanaimo did not own very much property in the harbour area, about an acre I am told, and generally it is expected that the city joins in. In some cases cities have gone out to buy property in order to make a contribution to a harbour commission of this sort. In this particular case the public harbour, as defined under the Six Harbours Agreement with the province of British Columbia, is a good deal smaller than the harbour contemplated. It is right in the immediate neighbourhood of the docks. So there is a significant area under provincial jurisdiction, water lots and that sort of thing, and I gather negotiations have been going on whereby the province would permit, as they do in the case of the North Fraser Harbour Commission, a local harbour commission to administer these water lots for them. I gather there have been extended negotiations.

Senator REID: Most of the development that has taken place in Nanaimo is as a result of passenger car traffic. It is not like New Westminster where they have ships coming in from overseas and where they have elevators, and so on. What has Nanaimo got outside of the passenger car traffic?

Mr. MANNING: In the brief presented by the Board of Trade they suggest that if they have control of this harbour they will be able to get industry to come into Nanaimo.

Senator REID: I do not think the industry has developed yet.

Mr. MANNING: No, but they hope to get it.

Senator REID: We had the trade first before we had the harbour.

Senator BRUNT: Could the city of Nanaimo not arrange to have this harbour operated by the National Harbours Board?

Mr. STEAD: They have not asked for it.

Senator BRUNT: One last question: Will the commissioners and employees be under the jurisdiction of the Civil Service?

Mr. STEAD: No, senator, these commissions are private corporations.

Senator MACDONALD: Just on that last point: How many officials and employees will there be, say, at Oshawa?

Mr. STEAD: This, of course, will be a matter for the commissions themselves.

Senator MACDONALD: Of necessity there will be—

Mr. STEAD: A harbour master, who often functions as secretary of the commission, and performs related duties. It depends on the size of the operation but when it gets too much for one man they do get a secretary and other staff as their revenues permit and the workload requires.

Senator REID: Where do they get the funds?

Mr. STEAD: We transfer the revenue we are now getting to the local harbour commission when it is set up and in being.

Senator MACDONALD: Who makes the appointment of the harbour master?

Mr. STEAD: The commissioners.

Senator MACDONALD: Do they make all the appointments?

Mr. STEAD: Yes.

Senator MACDONALD: Do these appointments have to be approved by the department?

Mr. STEAD: No, sir.

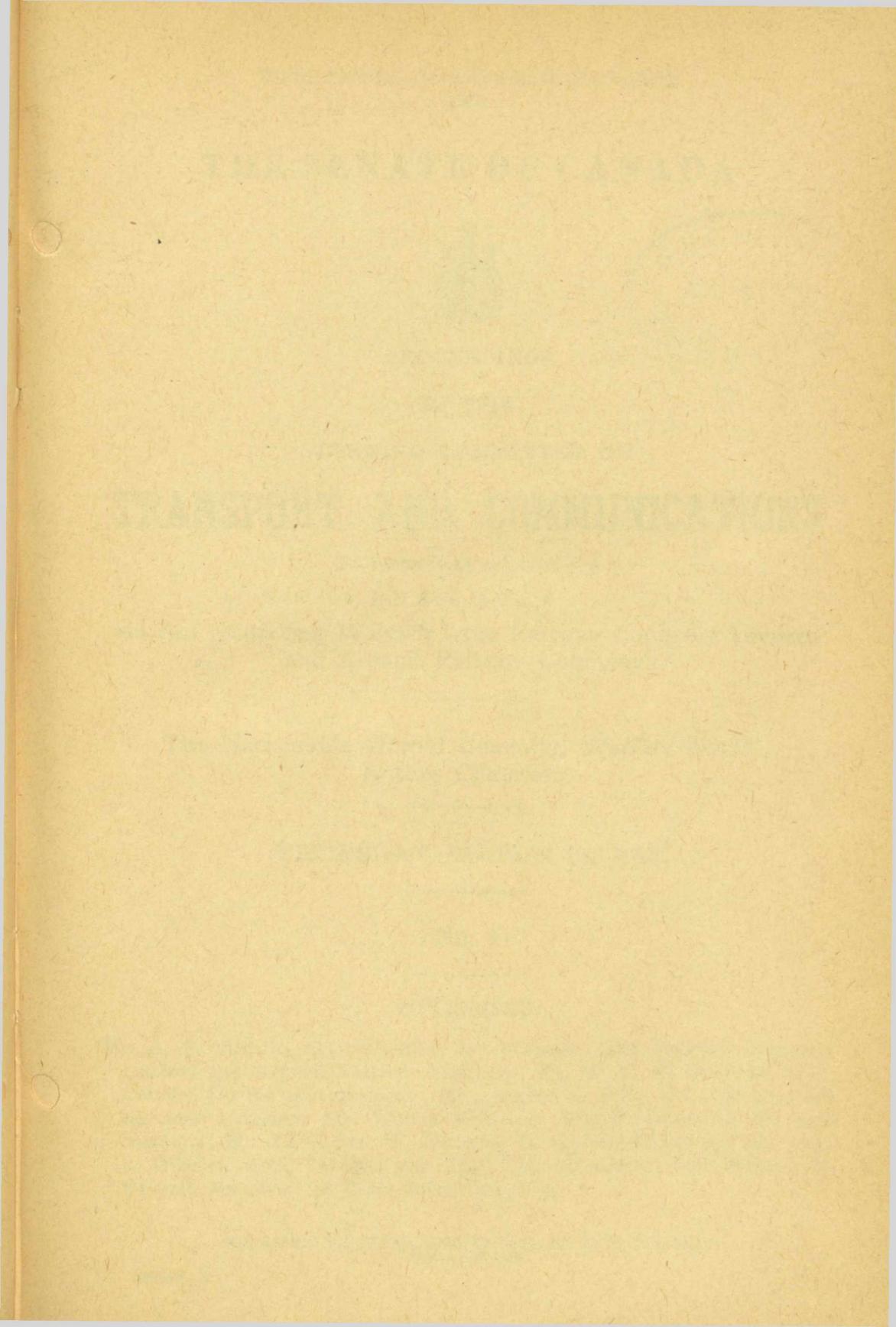
The ACTING CHAIRMAN: Are there any further questions? Honourable senators, what is your pleasure? Is it your pleasure to report Bill S-5, to incorporate the Oshawa Harbour Commissioners, without amendment?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Is it your pleasure to report Bill S-10, to incorporate the Nanaimo Harbour Commissioners, without amendment?

Hon. SENATORS: Agreed.

—Thereupon the committee adjourned.



THE SENATE OF CANADA



PROCEEDINGS
OF THE
STANDING COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

To whom was referred the
Bill S-24, intituled:
An Act respecting Wabush Lake Railway Company Limited
and Arnaud Railway Company.

The Honourable Harold Connolly, (*Halifax North*),
Acting Chairman.

THURSDAY, MARCH 24, 1960

No. 1

WITNESSES:

Mr. A. S. Pattillo, Q.C., Counsel for Wabush Lake Railway Company Limited and Arnaud Railway Company; Mr. W. E. P. DeRoche, Q.C., Counsel for the said company; Mr. Jacques de Billy, Q.C., Counsel for the said company; Mr. Walter Williams, Vice-President of the said company; Mr. Keith Benson, Secretary of the said company; Mr. John L. O'Brien, Q.C., Solicitor for Carol Lake Company; Mr. William H. Durrell, President of Carol Lake Company.

THE STANDING COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable ADRIAN K. HUGESSEN, *Chairman*

The Honourable Senators

| | | |
|-----------------------------------|------------|---------------------------|
| *Aseltine | Gladstone | Molson |
| Baird | Gouin | Monette |
| Beaubien | Grant | Paterson |
| Bishop | Haig | Pearson |
| Blois | Hardy | Power |
| Bouffard | Hayden | Quinn |
| Bradley | Horner | Raymond |
| Brunt | Hugesen | Reid |
| Buchanan | Isnor | Robertson |
| Campbell | Jodoin | Roebuck |
| Connolly (<i>Halifax North</i>) | Kinley | Smith (<i>Queens-</i> |
| Connolly (<i>Ottawa West</i>) | Lambert | <i>Shelburne</i>) |
| Courtemanche | Lefrançois | Smith (<i>Kamloops</i>) |
| Dessureault | *Macdonald | Stambaugh |
| Emerson | McGrand | Veniot |
| Euler | McKeen | Vien |
| Farris | McLean | Woodrow—(50) |
| Gershaw | Méthot | |

50 members

(QUORUM 9)

**Ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, March 17, 1960.

“Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator White, that the Bill S-24, intituled: “An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator White, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, March 24, 1960.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10:30 a.m.

Present: The Honourable Senators: Beaubien, Blois, Bradley, Brunt, Buchanan, Connolly (*Halifax North*), Connolly (*Ottawa West*), Gershaw, Gladstone, Gouin, Haig, Horner, Isnor, Kinley, Macdonald, McGrand, McKeen, Méthot, Monette, Power, Reid, Smith (*Queens-Shelburne*), Veniot and Woodrow.—24.

In attendance: Mr. E. R. Hopkins, Law Clerk, and Parliamentary Counsel. The official reporters of the Senate.

In the absence of the Chairman and on Motion of the Honourable Senator Beaubien, the Honourable Senator Connolly (*Halifax North*) was elected Acting Chairman.

The following Bill was read and considered.

Bill S-24, an Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company.

On Motion of the Honourable Senator Reid, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

Heard in explanation of the Bill were Mr. A. S. Pattillo, Q.C., Counsel for the Wabush Lake Railway Company and Arnaud Railway Company; Mr. W.E. P. DeRoche, Q.C., and Mr. Jacques de Billy, Q.C., also counsel for the above mentioned company; Mr. Walter Williams, Vice-President of the said company and Mr. Keith Benson, Secretary of the said company.

In attendance but not heard were: Mr. William Scully, President of the said company and Mr. Ronald Merriam, Parliamentary agent for the said company.

Heard in opposition to the Bill: Mr. John L. O'Brien, Q.C., counsel for the Carol Lake Company and Mr. William H. Durrell, President of Carol Lake Company.

At 1:00 p.m. the further consideration of the Bill was postponed to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

OTTAWA, Thursday, March 24, 1960.

The Standing Committee on Transport and Communications, to which was referred Bill S-24, respecting the Wabush Lake Railway Company Limited and Arnaud Railway Company, met this day at 11.00 a.m.

Senator HAROLD CONNOLLY (*Halifax North*): Acting Chairman.

The ACTING CHAIRMAN: Gentlemen, we have a quorum, so will you come to order. We have before us this morning for our consideration Bill S-24, respecting Wabush Lake Railway Company Limited and Arnaud Railway Company.

Mr. A. S. Pattillo, Q.C., who is counsel for the Wabush company will fully explain what this company intends to do and he will also introduce the delegation here this morning.

A. S. Pattillo, Q.C., Counsel for Wabush Lake Railway Company Limited:

Mr. Chairman and honourable senators, I am here supporting this bill on behalf of the two railway companies and I have with me, in the order in which they are sitting, Mr. Keith Benson, who is the secretary of the two companies and is from Picklands, Mather of Cleveland, U.S.A.; Mr. W. E. P. DeRoche, Q.C., who is the draftsman of the bill; Mr. Jacques de Billy, Q.C., from Quebec City, who has done the work in the province of Quebec in connection with the Arnaud company; Mr. William Scully, who is the president of the Steel Company of Canada, one of the principal supporters of this whole project; and Mr. Walter Williams, from Picklands, Mather and Company, engineers, and who has been in charge of the project from the commencement.

I would like to try and explain, with the assistance of my partner, Mr. DeRoche, who will show you on the map just what this project is all about and just why we are here seeking the bill we are seeking. You will observe, looking at the map, that it shows Labrador and the province of Quebec, and we have a tracing in a black line indicating, and I use this word advisedly, the approximate boundary between the two provinces.

Now, may I show you Wabush Lake, which is the area in which this very substantial ore body is to be found.

Senator BRADLEY: What side of the boundary is that on?

Mr. PATTILLO: That is in Labrador. These deposits are situated there inside the province of Newfoundland. At the present time there is in existence a railway known as the Quebec North Shore and Labrador Railway which runs from the south from a point on the St. Lawrence River at Seven Islands north through the province of Quebec into Labrador, to Shefferville. Because of the fact that that railway runs through two provinces it is a federal railway incorporated by special act of Parliament of Canada and is under the jurisdiction of the Board of Transport Commissioners.

Now, in order to get ore from Wabush to market the project contemplated is the following: First, a railway of 40 miles approximately in length from Wabush Lake to mile 224 of the Quebec North Shore and Labrador Railway Company. That railway company at the moment is a provincial company incorporated in Newfoundland.

Senator BRADLEY: And this proposed line is to be wholly in Newfoundland?

Mr. PATTILLO: Yes, the proposed railway line is to be wholly in Newfoundland, a distance of 40 miles.

When one travels south on the Quebec and North Shore Railway, because of the fact that dock facilities at Seven Islands are presently wholly engaged, there will have to be other new dock facilities built, and the intention is that they should be built across the bay at a place called Pointe Noire. Now, in order to get from Pointe Noire where the dock facilities will be built to the Quebec and North Shore Railway Company line there is a line of railway known as the Arnaud, and the Arnaud railway will be approximately 20 miles in length running from the docks to mile 7 on the Quebec and North Shore line.

Senator MACDONALD: Is that railway in existence now?

Mr. PATTILLO: That railway has been incorporated in the province of Quebec as a provincial railway company in that province. It is not physically in existence.

May I explain that so far as Wabush, the one in Newfoundland is concerned, that its roadbed has been made, and tracks will be laid this year. As far as Arnaud is concerned the right of way has been surveyed and a lot of the land has been acquired. Mr. de Billy will explain exactly the progress that has been made on that.

What is contemplated is that the ore will come from Wabush Lake and there is to be a plant there and a town will be built and the ore will be concentrated there and the concentrates loaded on cars, brought over the Wabush a distance of 40 miles to the Quebec and North Shore, then down the Quebec and North Shore to mile 7 and then over the Arnaud railway to the docks where it will be readied for shipment.

Senator MONETTE: What is the distance from the Quebec North Shore to the docks?

Mr. PATTILLO: Twenty miles.

Now, you can see at once that one of the most important items of all in moving these concentrates to market is going to be the cost of moving it from Wabush Lake Railway to the St. Lawrence.

Now, as long as we have a Newfoundland provincial railway, a federal railway and a Quebec provincial railway over which this ore must move, you have no one body which has the jurisdiction to determine what the rates of carriage should be, but if you have all three railways brought under Parliament then they all come under the jurisdiction of the Board of Transport Commissioners and the Board of Transport Commissioners then has jurisdiction to determine what are reasonable and fair and proper rates of carriage.

Senator CONNOLLY (*Ottawa West*): Mr. Pattillo, I suppose you could do this by contract, could you not as between the three railway companies?

Mr. PATTILLO: The shipper could agree. You can do anything by agreement, Senator Connolly. You are quite correct. If the provincial railways and the federal railway reached satisfactory agreements that is one thing. The other thing of course is if the shipper, Wabush Iron Company, when it comes to ship it, can make an agreement with the other railways, then that is all right.

Senator CONNOLLY (*Ottawa West*): But I take it your point is that it is clumsy and difficult to do it that way?

Mr. PATTILLO: Not only that. The difficulty we are up against is this: This whole investment we are talking about by the time we are through is estimated to run over \$200 million. Now, to invest money of that nature—we have already invested over \$20 million—we certainly need to know what the cost picture is going to be. We cannot rely on being able to reach agreements at the end of the day.

Senator McKEEN: Mr. Pattillo, would there not be another angle to this, that if the provincial railway runs across the line of the other province, that is, if the provinces do not know where the boundary lies, where will you be? You might be running between two provinces and not think you are. Would that not be a further complication?

Mr. PATTILLO: I don't think there is any difficulty about that. The province of Quebec has agreed that Wabush is in the province of Newfoundland.

Senator McKEEN: And Newfoundland has agreed that the other railway is all in Quebec.

Mr. PATTILLO: Yes. So we are not in any problem about that. What we are concerned about is to get as soon as possible an accurate picture of what the cost is going to be; and we hope to be able to obtain satisfactory settlement of that by agreement with the other parties concerned. If we can't do that, then we want to be in a position where we can start at once, because we must have this project in operation by 1965. If we do not get going by then, some of the rights which have been granted to us are going to be lost.

Senator CONNOLLY (*Ottawa West*): This is your railway project?

Mr. PATTILLO: That is right.

Senator CONNOLLY (*Ottawa West*): How long will it take to build the northern spur, if I may refer to it in that way?

Mr. PATTILLO: The northern spur is in this position: the road bed is built, and the trackage will come down this year, 1960.

Senator CONNOLLY (*Ottawa West*): And what about the lower part?

Mr. PATTILLO: The lower part hasn't yet been begun.

Senator CONNOLLY (*Ottawa West*): But it is only 12 miles.

Mr. PATTILLO: Twenty miles.

Senator MACDONALD: Is the Quebec North Shore and Labrador Railway a subsidiary of the Canadian National?

Mr. PATTILLO: No. It is owned by the Iron Ore Corporation. Mr. O'Brien is here to speak for it, and he will explain that to you. As I say, my understanding is it is owned by the Iron Ore Corporation, which has substantial deposits in Labrador, and which brings the ore down to Seven Islands and is shipping today, and has been for a couple of years.

What we are seeking to do is get our whole project in being very quickly. Why we have come here and said this is all for the general advantage of Canada is: when we have this project going we will be shipping approximately 10 million tons annually. We will start out with shipping of 5 million tons a year, and we will be shipping eventually 10 millions. That is our scheme. We will be at that time employing 2,000 people in the vicinity of Wabush Lake; and you can appreciate that, if we have 2,000 people on our payroll, a great many more will be indirectly given jobs by reason of services required and that sort of thing. In other words, this, in my opinion, is one of the big steps towards the opening up of that section of the north. In addition to that, we will have these big docks built down at Pointe Noire, and there will be a great deal of shipping going on.

Senator ISNOR: Did you say "shipping"?

Mr. PATTILLO: Shipping.

Senator ISNOR: What is the distance from the pier you mentioned to where you land the ore?

Mr. PATTILLO: The distance from Wabush to where we land the ore?

Senator ISNOR: No, from Pointe Noire to market.

Mr. PATTILLO: Hamilton will be the first market. Quite frankly, I have spent so many years in Nova Scotia I have never bothered to calculate the mileage of the St. Lawrence.

Senator CONNOLLY (*Ottawa West*): Not in Upper Canada.

Senator MACDONALD: The Maritimes has neglected poor Upper Canada.

Senator BLOIS: Why are you building this spur of 20 miles? Is it not possible to use the facilities at Seven Islands?

Mr. PATTILLO: No, because they built those facilities for the specific purpose of their own project, and they have not sufficient facilities to look after both their own operations and ours.

Senator BLOIS: In other words, it is cheaper for your company to build new facilities, rather than attempt to get—

Mr. PATTILLO: First of all, there is not the land there for us to obtain, so we have to go over here.

Senator CONNOLLY (*Ottawa West*): All of this is being done at private expense, including the docking facilities?

Mr. PATTILLO: Everything is being done at private expense.

Senator CONNOLLY (*Ottawa West*): There is no dredging being done by the Government, or any other agency.

Mr. PATTILLO: No, not that I have heard. Now, I can tell you this, gentlemen, that when we came to the conclusion that we needed to come to Parliament to seek this bill to federalize these two railways we, of course, went to the provincial authorities who had incorporated both companies, and we explained to them exactly what we were doing and why we were doing it. They are thoroughly familiar, both in the province of Newfoundland and in the province of Quebec, as to the bill that is before you, and why it is before you, and they are not offering any objections.

I think I neglected to tell you that in addition to this railway that is being built up in the north, so far as grade is concerned we established last year a pilot plant in there which is in operation today. Mr. O'Brien will probably tell you, when he is talking on the bill, that with respect to this 40-mile strip of railway the roadbed is being built by a company called Northern. Northern is going to be the owner of the actual roadbed and the track. Northern is 50 per cent owned by Wabush Iron and by a company which is known as Carol Lake. Those two companies have gotten together to build this roadbed.

Senator CONNOLLY (*Ottawa West*): Are they contracting companies? Are they builders? Are they construction companies?

Mr. PATTILLO: No, the Iron Ore Corporation and Wabush Iron both have deposits in this area, and they have agreed to set up a company known as Northern which will own the roadbed of this 40-mile strip.

Senator CONNOLLY (*Ottawa West*): Is that the full name of the company, Mr. Pattillo?

Mr. PATTILLO: Northern Land Company Limited.

Senator CONNOLLY (*Ottawa West*): It is not incorporated as a railway company.

Mr. PATTILLO: No.

Senator MACDONALD: That is a Newfoundland company, I take it?

Mr. PATTILLO: That is right. Now, Wabush Lake Railway and another railway company of the Iron Ore Corporation group will have the running rights over this 40-mile strip. I think that is everything I can tell you, generally, at the beginning, honourable senators, and, as I say, if you will just ask any questions you wish then we are here to try to supply the answers.

Senator BRUNT: I presume all the witnesses from now on are specialists in their own line?

Mr. PATTILLO: Yes.

Senator BRUNT: Then we may start with the first specialist, and ask questions of him.

Senator WOODROW: Who owns the iron ore company there—what company?

Mr. BENSON: The iron ore company is held under a lease by Wabush Iron. Wabush Iron Company is owned by a series of iron and steel companies, of which the Steel Company of Canada is one of the principal owners, and the rights of the Wabush Iron Company are held under lease from Canadian Javelin which holds the property under lease from the Newfoundland and Labrador Corporation Limited, which in turn holds it from the Government of Newfoundland.

Senator WOODROW: What is the estimated tonnage of the iron ore?

Mr. BENSON: 600 Million tons of concentrate.

Senator REID: Can you tell us the iron content of the ore in the ground, and that it will be when it is concentrated?

Mr. BENSON: Approximately 37 per cent in the ground, and when it is concentrated it will be up to around 66 per cent.

Senator BRADLEY: Is that a low grade ore?

Mr. BENSON: Yes, sir, but its structure is such that it lends itself to concentration, and to high concentration.

Senator MACDONALD: I may be a neophyte, but at the present time I can see no objection to this bill. There may be some objection to it, but, personally, I cannot see any.

Senator HAIG: If you cannot find any objections to it then they are no objections.

Senator MACDONALD: I am not a railway man, but I would like to know what the objection is.

The CHAIRMAN: Gentlemen, Mr. O'Brien is here representing the other side of the situation. Unless there is something more to be said by your group—

Senator REID: I understand you are building a smelter there to concentrate the ore from 40 per cent to 60 per cent. Will the ore taken from the ground be treated there, and increased to 60 per cent?

Mr. WILLIAMS: The crude ore will be taken and put through a mill which will crush it and concentrate it into a concentrate, and that concentrate will be approximately 66 per cent. It can vary according to the process we use. That concentrate will be shipped, according to our plans now, to Seven Islands, and from Seven Islands to the users.

Senator REID: That will save considerable freight?

Mr. WILLIAMS: It will save considerable freight over shipping crude.

Senator BRADLEY: Is that the oil flotation system of concentration?

Mr. WILLIAMS: No, we are at the present running a pilot plant to determine the actual process. We expect it will be a matter of crushing it and grinding it and then putting it through Humphrey spirals, and it will be the spirals that will do the separation.

Senator BRADLEY: So it is a physical process?

Mr. WILLIAMS: Yes.

Senator LEONARD: Is it an open pit operation or an underground operation?

Mr. WILLIAMS: In order to ship this material, and we are planning to ship it the year round, it will be necessary to dry it up to not more than one per cent moisture. As the material comes out of the ground in the crude state it will run from 2 to 6 per cent, depending on the time of year and the conditions. We will concentrate it when it is in the form of concentrate it will be dried so that it will ship in cold weather without freezing.

Mr. PATTILLO: Senator Leonard asked whether it would be an open pit operation or an underground operation.

Mr. WILLIAMS: The present plans are that it will be an open pit mine. A great deal of this material is in a hill which is above the level of the lake. It is unlike the Masabi Range where you dig down to get the material. Here you cut down the hillside.

Senator KINLEY: Will your transportation system go right into Seven Islands or will it branch off farther up?

Mr. WILLIAMS: It will branch off before it gets to Seven Islands and it will go around the bay.

Senator KINLEY: You said a few minutes ago that it will go into Seven Islands?

Mr. WILLIAMS: Well, it is the whole general area.

Senator HAIG: I move that the bill pass.

The ACTING CHAIRMAN: Any further questions?

Senator ISNOR: I understand Mr. Pattillo to say that Mr. DeRoche did the drafting in connection with this bill. I made an observation in the Senate chamber concerning section 2 of the bill, and I have looked up section 92 of the British North America Act, and in particular clause 10(c) thereof. I would like Mr. DeRoche to tell us the necessity for including section 2 in a bill of this type. As I understand it the operation will be confined wholly to two provinces.

Mr. DEROCHE: I have to go back to sections 91 and 92 of the British North America Act myself in order to deal with section 2 in this bill. These individual railways being each wholly, within a separate province, looked upon as separate individual railways, would of course be under provincial jurisdiction and not federal jurisdiction, but when we look at section 92 we find surprisingly, that there is expected from the provincial jurisdiction any public work declared by the Parliament of Canada to be for the general advantage of Canada, so that if these railways are to be under the jurisdiction of the Parliament of Canada and importantly—and, of course, the basic reason for the bill—under the jurisdiction of the Board of Transport Commissioners so that a single body can deal with all three railways involved, if these railways are to be brought under the jurisdiction of the Board of Transport Commissioners, then it is essential that the Parliament of Canada declare that they are for general advantage of Canada.

Senator ISNOR: Taking the words I had in mind, "for the general advantage of Canada" I think Mr. Pattillo has made it abundantly clear that this is an operation for two provinces plus the St. Lawrence Seaway.

Senator BRUNT: Plus Ontario. We get the iron ore in Hamilton, so that we get a benefit too.

Senator ISNOR: That makes three provinces.

Senator MACDONALD: And what is good for three provinces is good for all ten.

Mr. DEROCHE: Those are the very words in the B.N.A. Act, and the very words that appear in similar bills of this kind.

Senator REID: Is the word "undertakings" in the Railway Act, for railway works and undertakings of the company are declared to be works for the general advantage of Canada. How far does the word "undertakings" go? I cannot understand this reference to "undertakings" being declared for the general advantage of Canada.

Mr. DEROCHE: The word "undertakings" is in the Railway Act. I am perhaps in some difficulties because that was not my word. That was added later. The expression "works and undertakings" is a single phrase and a common phrase throughout the Railway Act.

Senator LEONARD: Is that the exact wording in the British North America Act? Is the word "undertakings" in the B.N.A. Act?

Mr. DEROCHE: I do not think so. I think it is "works".

Senator BRUNT: It reads: "Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada..."

Senator REID: A railway can have a lot of things that do not have much to do with a railroad as such.

Senator POWER: It could have a hotel seeking a liquor licence.

Senator GOUIN: I know that the Mount Royal tunnel in Montreal is declared to be for the general advantage of Canada. You start from Montreal and you are able to go west or east, and so on.

Senator REID: Here it says that the undertakings of the companies are declared to be for the general advantage of Canada.

Mr. DEROCHE: We would have no objection whatever to taking out the word "undertakings". To me it is a restatement of words.

Senator CONNOLLY (*Ottawa West*): I would like to ask a question of Mr. Pattillo or Mr. DeRoche. Perhaps they would not want to answer it but when the sponsor was explaining this bill in the house he referred to the Arnaud Railway Company, and just by listening to him there was some confusion between the word "Arnaud" and the words "Iron Ore". I thought at one stage he was talking about iron ore when he used the word "Arnaud". Is there any possibility of confusion arising out of the use of that name, and what is its derivation?

Mr. PATTILLO: Could we have Mr. DeBilly answer that question. He will explain the derivation.

Mr. DEBILLY: Mr. President and honourable senators, the word "Arnaud" is the name of the township in which Pointe Noire is located. That is, therefore, where the termination of this proposed railway would be located. Arnaud township was constituted in 1878, and Arnaud is the name of a missionary in the 1800's who spent half a century on the north shore and worked among the Indian tribes there, and his name was given to the township. That is why the name Arnaud Railway Company was selected or chosen. Of course, the other railroad is the Quebec North Shore and Labrador Railway Company, so I do not think there could be any confusion between the two railroads. It was felt at the time that Arnaud being the name of the township where this railroad would end would be an appropriate name for the railroad company.

Senator MONETTE: Was Arnaud there first?

Mr. DE BILLY: Yes.

Senator CONNOLLY (*Ottawa West*): Arnaud was there first, Senator.

Senator LEONARD: Could we hear from the witness what the situation in the province of Quebec with relation to Newfoundland is in regard to this legislation?

Mr. DE BILLY: Of course, the province of Quebec has not got in this project the same interest as the province of Newfoundland, because the natural resources which are being developed and transported to the market belong to the province of Newfoundland. I may mention that, I guess it was in October after Premier Sauve was chosen as Prime Minister of Quebec that the officers of Wabush and Arnaud Railway went to see him, with us, and after we explained that this railway was to transport iron ore from Newfoundland, he said, "Well, you are welcome to Quebec, because whatever kind of activity you are bringing is derived from the natural resources of another province." When this bill was being drafted, we went to explain the project to Quebec Government again that we were seeking to federalize our railroad, and we were told that the interest of the Province was limited and they of course could not pass an order in council to approve this decision, but they had no objection, and that it would not affect the standing of the Company in Quebec.

Senator REID: What royalties are to be paid to the province of Newfoundland, may I ask?

Mr. BENSON: The Wabush Company pays a royalty to the province of Newfoundland of 22 cents a ton.

Senator REID: On the concentrate?

Mr. BENSON: Yes, sir.

Senator CONNOLLY (*Ottawa West*): I ask this question, because the sponsor of the bill suggested that it might be dealt with in committee: As I understand the matter, henceforth if Wabush Railway needs any amendments to its charter and the same applies to Arnaud, that the jurisdiction not only for rate setting before the Board of Transport Commissioners, but the jurisdiction in respect of powers and capital, and the rest contained in the charter, would be federal. Now, are there any provisions in either of these provincial charters which are broader or narrower—different, than you could normally expect to get from the Parliament of Canada for these companies?

Mr. DEROCHE: May I take a second or two, and also speak on the name? When I read your remarks in *Hansard* it came as a complete surprise to all of us, because it had never occurred to us there could be any confusion. I must admit since I have been sitting and listening here I now thoroughly sympathize with the verbal confusion.

Senator CONNOLLY (*Ottawa West*): You should have heard Senator Brunt the other day!

Mr. DEROCHE: I should say on that, that should the honourable senators think there is any real confusion, of course we have no objection whatever to including in this bill a change in the name.

Senator CONNOLLY (*Ottawa West*): All we want to do is to bring it to your attention, that is all.

Mr. DEROCHE: We do not feel there could be any confusion, due to the geographical location. On the other hand, we have reviewed the legislation, and I think I can fairly say that speaking broadly and practically there are no rights in the provincial bills which go beyond the rights which would in the normal course have been granted under federal incorporation. There are some

differences, there are some additions, there are some matters dealing solely with provincial rights which we would still have to obtain from the province, dealing with provincial taxes, and that sort of thing; but in relation to the railway, as a practical matter we can see nothing that departs in a practical way from what we could get here. There are, I think, only two points that could really arise at all. The rights granted by the province of Newfoundland to build railways are in wider language than I think would be granted here. Fortunately, speaking of the area of which we are speaking, and speaking of practical matters, I do not think that is of any practical importance. The other point which I think is a little confusing relates to running rights. Mr. Pattillo explained that over the northern section, the Wabush section of this railway, the roadbed itself is being built as a joint operation of the iron ore company, which has very substantial deposits in the same area as the Wabush company, and that joint effort was put together in the form of this land-holding company—Northern Land Company, and the running rights over its roadbed were in everyone's contemplation to be granted to the Iron Ore Company through its local railway company, the Carol Lake Railway Company and to the Wabush Company. Each were to have 50 per cent of the running time, and the two parent companies were to each pay 50 per cent of the costs. The operating costs were to be divided in accordance with traffic; and the area of confusion here arises from, I think it is section 156 of the Railway Act, which mentions 21 years in regard to running rights. The Newfoundland legislation, the one referring to the Carol Lake Wabush Agreement, referred to running rights in perpetuity. No running rights agreement has yet been entered into, and this bill provides that the Railway Act shall apply hereafter, so that it may be that so far as Wabush is concerned it may now only be able to obtain a more limited right than it would have been able to obtain before. But so far as obligations are concerned there is no change at all. I think actually that that question of running rights is the only question that we can find that is in any sense material, and if there is any detriment there, and we do not think there is, as a matter of fact, we do not think that the section of the Railway Act does apply in this circumstance, but if there is any detriment it is a detriment which we accept by making this application.

Senator CONNOLLY (*Ottawa West*): Would it be fair to say this, that by this act you are putting yourselves under the jurisdiction of the Parliament of Canada, and the Railway Act says that whatever authority you have in these two charters will now be limited by the terms of the Railway Act through this Bill S-24. Is that a fair way to put it?

Mr. DEROCHE: That is certainly true, Senator Connolly, for the future. The section to which you are referring is a section which has appeared in substantially all bills of this type. It would appear to me it is founded on the basis that where rights have been acquired, and where obligations have been entered into that the Parliament of Canada in taking this step would not wish and certainly we have no thought of asking the Parliament of Canada to weaken or eliminate any obligation which we have validly taken on heretofore. So far as rights are concerned, if the rights have heretofore been acquired it has been the practice to say they continue to have them, and if the rights have not been acquired and with some doubts I suggest if the rights have not been crystalized into an agreement, then any step we take in the future is governed by the Railway Act, the Board of Transport Commissioners and the Parliament of Canada.

Mr. HOPKINS: That is in virtue of Section 4?

Mr. DEROCHE: Yes.

Senator ISNOR: I asked Mr. Pattillo what is the distance from Point Noire to Hamilton but he was not able to tell me. We are told it is approximately 800 miles. How does that compare with the distance to Sydney? I will tell you my reason for asking that question: We had hoped in Nova Scotia and particularly in the Cape Breton area that this operation might make use of Sydney and particularly in view of the steel works there, but now we are disappointed to know that it is going to be wholly confined to the St. Lawrence Seaway and the American ports.

Mr. PATTILLO: Senator Isnor, I am not sure about the distance to Sydney, but I do know, and I am sure you do, that Bosco has very substantial ore holdings of its own and has a very substantial capital investment in them. I assume that having made the investment that they are probably most anxious to work the investment out. This project of course is one in which there will be ample ore coming down to the companies that are interested in acquiring it. They do not intend, that is my understanding, that it be solely for their own use.

Senator ISNOR: How much do you expect to ship to the United States?

Mr. PATTILLO: I would not know.

Senator ISNOR: Would it be 90 per cent, do you think?

Mr. PATTILLO: No, I would not go that far at all.

Senator ISNOR: What proportion then?

Mr. PATTILLO: The Steel Company's interest in this thing at the moment is substantial, it is 25 per cent.

Senator MACDONALD: I am still somewhat confused about the manner in which the company will operate. Will each of the companies operate as provincial companies or as federal companies?

Mr. PATTILLO: Once this bill passes they will operate as federal companies; they will be federal companies from then on.

Senator BRADLEY: That is, the railways?

Mr. PATTILLO: The railways, yes.

Senator MACDONALD: But they will still keep their provincial charters?

Mr. PATTILLO: This is something like a girl getting married: She has certain things before she gets married, don't take them away from her.

Senator MACDONALD: What do you leave with her, so far as the provincial Governments are concerned?

Paragraph 4 of your bill provides that

Notwithstanding section 3, each of the Companies and any corporate successor or successors thereof, in respect of their respective tolls and tariffs, and of the operation, construction, improvement, maintenance and control of all railways and railway undertakings which either of them may own or operate in Canada, shall hereafter have all the powers, rights and immunities and be subject to all the obligations provided for in the *Railway Act* in respect of railways and railway undertakings subject to the legislative authority of the Parliament of Canada.

What is there left?

Mr. PATTILLO: The provisions in the acts as to annual meetings, as to directors and all that sort of thing, except in so far as the *Railway Act* supersedes them, will be the governing provisions so far as the corporation is concerned.

Mr. DEROCHE: So far as the provincial legislation is concerned, nothing; no longer can the provincial legislatures deal with these companies, they must deal with the Parliament of Canada directly.

Senator LEONARD: Is there any precedent at all for this?

Mr. DEROCHE: There is a list of precisely similar cases going back to 1900, but if I had gone back beyond 1900 the list would have been longer.

Senator LEONARD: That is, original provincial incorporations which have come under federal jurisdiction?

Senator BRADLEY: Who controls the shares of these railway companies?

Mr. DEROCHE: Senator Brunt set that out in some detail. The railway companies themselves are wholly-owned subsidiaries of the Wabush Iron Company. Going back to the Wabush Iron Company, its shares are held by the participating steel companies which include the Steel Company of Canada for 25 per cent, and five or six of the American steel companies are shareholders.

Senator MACDONALD: Coming back to my former question: Will you amend your provincial charter if this bill goes through?

Mr. DEROCHE: We do not expect to.

Senator KINLEY: Will this company and the company at Seven Islands be competing companies for the sale of iron ore in the open market or will they be controlled by the steel companies behind it?

Mr. DEROCHE: They will be competing companies. The controlling steel companies expect, and in fact agree to take most of the ore, otherwise they could not finance. But there is more ore here than the steel companies can use so it will be in the market for selling at current prices.

Senator KINLEY: Suppose that the British Empire Steel Company in Sydney wanted to buy concentrates, would they be entitled to do so at the same price as would be paid by the steel companies behind this?

Mr. DEROCHE: There will be iron ore available to anyone at market prices.

Senator KINLEY: Is that statutory?

Mr. DEROCHE: No, it is factual, because this is a very large ore body.

Senator POWER: May I ask who is going to operate the Wabush railway that is apparently controlled on a 50-50 basis by the Iron Ore Railway and the Wabush? Who is going to operate this operation?

Mr. DEROCHE: I am a little confused about that. The Wabush Railway Company is wholly controlled by the Wabush Iron Company. The Carol Lake Railway Company is wholly owned by the Iron Ore Company of Canada. These two railway companies will operate over a roadbed and railways owned by a company called Northern Land Company, and Northern Land Company is owned jointly by the two iron companies, the Iron Ore Company and the Wabush Iron.

Senator POWER: Somebody is going to have to run the engines.

Mr. DEROCHE: Each will run their own engines.

Senator POWER: Will there not be some supervision by somebody?

Mr. DEROCHE: The running rights agreement as to who will handle the switching hasn't been signed. Each will have a 50 per cent operating right, but the details of how they are going to operate haven't been settled and signed.

Senator POWER: There is no agreement of any kind?

Mr. DEROCHE: There is some agreement between the parties, but it has not been signed yet.

Mr. BENSON: The understanding is we will have to dispatch those trains ourselves under the supervision of the Iron Ore Company of Canada, through the Quebec North Shore and Labrador Railway Company; it will take a uniform co-operative effort to schedule the cars and trains so that there won't be confusion. One company must have that responsibility, and we have agreed in principle that each of the two railway companies which are operating over a

jointly owned track will operate their own trains under the general supervision of a committee type of function, the supervision to be primarily that of Quebec North Shore and Labrador Railway.

Senator POWER: The land and the right-of-way is owned by the Northern Land Company.

Mr. BENSON: Yes, sir.

Senator POWER: Do they lease that to this committee type of operation?

Mr. BENSON: The property rights in the Northern Land Company will be leased in a broad sense through the running rights agreement to each of the two railway companies. The Iron Ore Company railway is called the Carol Lake Company. Our railway is called the Wabush Lake Railway. Each of the two railways has a right to 50 per cent of the capacity of the joint section. The joint section has adequate capacity to handle any foreseeable tonnage that might be developed in the future.

Senator POWER: Who owns the rolling stock?

Mr. BENSON: The rolling stock will be furnished by each of the iron companies. We will furnish our own cars, and they will furnish their own cars.

Senator POWER: And the rails will be laid jointly? The Northern Land Company owns the rails too?

Mr. BENSON: That is correct. There will be sidings and so on, and they will be jointly owned through the Northern Land Company. Each of the two iron companies, the Iron Ore of Canada and the Wabush Lake Company, have agreed to finance whatever the costs may be of a joint section, and to build a roadbed, put in sidings and so on. We have also agreed on the method of handling our operating charges for maintenance and the like.

Senator CONNOLLY (*Ottawa West*): This question has no relation to this bill, Mr. Chairman, but I understand the company is going to establish its own docking facilities near Seven Islands. Will the company provide the water transport for the concentrate from Seven Islands to the lake?

Mr. WILLIAMS: The transport from Seven Islands to the users?

Senator CONNOLLY (*Ottawa West*): Yes.

Mr. WILLIAMS: I would assume that we haven't gone through all that phase of it, but certainly the concentrate will be hauled by various boats—some of it might be going to Europe.

Senator CONNOLLY (*Ottawa West*): All I want to know is, will you have your own boats?

Mr. WILLIAMS: We do have an interest in shipping; we have an interest in the Interlake Steamship Company, and we will haul some of the concentrate. The Wabush Company has no boats.

Senator BRUNT: And does not intend to have any.

Mr. WILLIAMS: Not at present.

Senator GOUIN: May I ask one question with respect to the charter rights of the railways, and whether they will remain operative? Will the charter continue to be effective if the jurisdiction changes?

I am under the impression they will remain in effect. The Quebec Central was a provincial company which was absorbed by the C.P.R., but it still has its charter.

Mr. DE BILLY: I would refer you to section 7 of the Railway Act, which reads as follows:

Where any railway, the construction or operation of which is authorized by a Special Act passed by the legislature of any province, is declared, by any Act of the Parliament of Canada, to be a work for the

general advantage of Canada, this Act applies to such railway, and to the company constructing or operating the same, to the exclusion of such of the provisions of the said Special Act as are inconsistent with this Act, and in lieu of any general railway Act of the province.

This section is applied to such railways and to the company constructing or operating the same, and subject to the provisions of this act, and the provisions of the general act of the province. So, the existence of the company can be continued by the federal Railway Act, which takes over from there.

Senator REID: I have one last question. What is the estimated amount of ore?

Mr. BENSON: The estimated concentrate in the Wabush Lake area is 600 million tons.

The ACTING CHAIRMAN: Gentlemen, up to now we have been only on one side of the track. We will now ask Mr. O'Brien to come forward.

Mr. J. L. O'BRIEN, Q.C.: Mr. Chairman, honourable senators, I am appearing on behalf of the Carol Lake Company and the Quebec North Shore and Labrador Railway Company, and with me is Mr. William H. Durrell, president of the Carol Lake Company.

Not having had as great an opportunity to prepare a presentation as my friends I may have to rely more fully on notes which were made late last night.

The Carol Lake Company which I represent is one of the companies mentioned in the preamble of this bill, and also in section 3 of the bill, and there is reference in both cases to The Wabush-Carol (Agreement) Act. That is an agreement between the Carol Lake Company and Wabush Lake Railway Company. Quebec North Shore and Labrador Railway Company, as you have heard, is the railway which has opened up the Labrador territory. It was built in the last decade, and put in operation partly while under construction and partly afterwards, for the past five years. It runs from Seven Islands on the St. Lawrence to Knob Lake, or Schefferville, as it is now known.

I may say further that both the Carol Lake Company and the Quebec North Shore and Labrador Railway Company are controlled by the Iron Ore Company of Canada.

With your permission, Mr. Chairman, I would like to say a few words as to the history of the relations between these two companies which led up to the introduction of this bill.

Senator MACDONALD: Before doing so would you explain what business the Carol Lake Company is in?

Mr. O'BRIEN: Yes, Senator Macdonald. The Carol Lake Company is solely a private mining railway company incorporated under the laws of Newfoundland for the sole purpose of carrying the products of the Carol Lake development, which I am about to explain.

It is only within the last decade, after a substantial amount of money spent on exploration, that a group of Canadian and American steel interests formed the Iron Ore Company of Canada to develop what are known as the high grade iron ore deposits at Knob Lake or Schefferville. When this development was under way with the approval of Parliament the Quebec North Shore and Labrador Railway Company was formed as a common carrier to serve the district and it, in fact, opened up the district both in the Quebec and the Newfoundland areas. The mine at Schefferville has been operating for some years. It has been serving Canadian and American steel companies and, may I say in reply to a question from one honourable senator, I am told that about 500,000 tons of ore goes to Sydney.

Senator BRUNT: How many years has it been in operation?

Mr. O'BRIEN: Roughly five years.

Mr. DURRALL: We commenced operations in the summer of 1954.

Mr. O'BRIEN: A few years ago it became apparent that by reason of technological improvements it might become possible to develop lower grade ore areas, of which the Iron Ore Company of Canada had a substantial amount in the Carol Lake district, which is approximately forty miles west of the present Quebec North Shore and Labrador Railway in the province of Newfoundland. It is very close to the Wabush Lake area which is being developed by my friends.

In view of the potentials there the Iron Ore Company of Canada a few years ago arranged to put in a pilot plant. They did so and last year it became apparent that the development of the territory was worth while, and at the present time a very large expenditure is under way at Carol Lake and a townsite is being built. When a decision was made to proceed with this it became apparent also that it would be necessary to have railway facilities over to the Carol Lake area, and last year about this time—in fact, February 29, 1959, a petition was presented to Parliament.

Senator CONNOLLY (*Ottawa West*): It could not have been that date. It must have been February 28.

Mr. O'BRIEN: Yes, I am sorry. Leap year has caught up with me. At any rate, I will say that a petition was presented to Parliament in February, 1959, for permission to build a federal railway from the Carol Lake area over to the North Shore and Labrador Railway, and that petition was duly presented. Concurrently with these steps on behalf of the Iron Ore Company of Canada, the Wabush Iron Company had formed a few years ago through Pickands Mather and Company of Cleveland, a syndicate of the United States Steel Companies and the Steel Company of Canada, started investigating the project in the Wabush area, having acquired rights, I believe, principally from the Canadian Javelin Company, and they had incorporated before Pickands Mather and Company took control, the Wabush Lake Railway Company, a Newfoundland common carrier, and they had explored and had started to work on the building a right of way entirely within the province of Newfoundland.

When our petition was lodged in the Parliament of Canada we were approached by representatives of the Government of Newfoundland and asked if we would abandon our application for a federal charter and join in with the Wabush group in the formation of a single railway to serve both companies, which we were told would be for the benefit of the province of Newfoundland and would be entirely within that province.

I may say that the application we had lodged with Parliament, the petition, envisaged a railway which would cross the Quebec border and re-enter Newfoundland. As a result of these representations the Iron Ore Co. representatives and the Carol Lake representatives, which effectively are under the same control—

Senator CONNOLLY (*Ottawa West*): Would you mind my interrupting you at this stage and asking you why you were petitioning Parliament for that?

Mr. O'BRIEN: To start with, the original railway was federally controlled. Secondly, the railway contemplated was to cross both Quebec and Newfoundland, which necessarily made it subject to federal jurisdiction.

Senator CONNOLLY (*Ottawa West*): Thank you.

Mr. O'BRIEN: In the circumstances and as a result of these representations, we made an agreement with the Wabush Lake group; we agreed to abandon the application to Parliament for a federal charter, and there were three steps taken, some of which have been described briefly this morning. The first was

that there was incorporated under Newfoundland law a company called Northern Land Company, a railway company which was to build a right of way, lay the rails and maintain it but was never intended to operate a train. It was agreed that this Northern Land Company would be owned 50 per cent by the Iron Ore Company and 50 per cent by Wabush Iron.

Then the charter of Wabush Railway Company, which as I said had been incorporated a few years before, was amended to permit it to enter into an agreement, of which I shall speak in a moment. Thirdly, the Carol Lake Company was incorporated under Newfoundland law as a private mining carrier. It was to serve only the mining development at Carol Lake.

Senator POWER: It was not to be a common carrier?

Mr. O'BRIEN: Not to be a common carrier. I may say immediately, in the event there is any question as to the other part of this bill which permits the building of a railway to the St. Lawrence by these two railways, that my clients have always stated to the Wabush Iron Company and Pickands Mather and Company that in so far as we are concerned we have no objection whatsoever to them having complete private building railway facilities for themselves. Our objection to this bill is that, in our view, it is departing from the agreements which we, may I say, unwillingly made, instead of proceeding with our application before Parliament to incorporate and build a railway over to the Carol-Wabush Lake area.

This Northern Land Company, which was so incorporated under the circumstance I have mentioned, was never to operate, but it was contemplated it would have two agreements: one, it would give running rights in perpetuity to the Wabush Lake Railway Company, which would serve the Wabush development and also any general traffic in the area; and, two, it would have a running rights agreement in perpetuity with the Carol Lake Company to provide railway facilities for the ore which my client is intending to mine.

Honourable senators, I ask you to note that although there was an agreement which would give rates in perpetuity there was also an obligation that these people were to respect in perpetuity in connection with the Northern Land Company, in which my clients have a considerable interest.

Senator CONNOLLY (*Ottawa West*): As to a minimum amount of traffic?

Mr. O'BRIEN: I speak subject to correction, because it is some time since I looked at the actual agreement, but some of the agreements are not embodied in these statutes. They are agreements made pursuant to this, and I speak subject to Mr. Benson correcting me but they are to divide the cost of operation of the Northern Land Company in the ratio of traffic carried with a minimum amount to be payable each year. I think it is 20 per cent, but it is paid whether it is used or not.

Senator MACDONALD: I understood you to say that Carol Lake Company has a substantial interest in the northern company.

Mr. O'BRIEN: No. Iron Ore Company of Canada owns 50 per cent of Northern Land Company; Wabush Iron owns 50 per cent of Northern Land Company; Carol Lake Company is a private mining railway which is also wholly owned by Iron Ore Company of Canada. It is the same interests but not the company you mentioned.

The situation at the present time is this: Northern Land Company is in the process of building a right-of-way, and it is foreseen that trains whether under construction or otherwise may be operating over it this summer. The Carol Lake Company, the private mining company, will have trains operating in there just as soon as they can get tracks. The Wabush Lake Railway Company it is not foreseen will have any reason to operate until its plant gets

into operation, and I am told the target date is 1965. There is one exception to that.

Senator MACDONALD: They will all operate over the Northern Land Company Railway?

Mr. O'BRIEN: Yes.

Senator BRUNT: But they will commence paying the 20 per cent proportion as soon as the railway is ready?

Mr. O'BRIEN: Yes.

Senator BRUNT: Whether they use it or not, as soon as the railway is ready they start to pay 20 per cent of maintenance costs?

Mr. O'BRIEN: Yes. I said there would be no occasion for the Wabush Lake Railway Company to operate until 1965. It may occur to some of you that somebody is going to have to look after the production of the pilot plant which was put into operation recently. Iron Ore Company of Canada has undertaken to look after the products of the pilot plant, so there is no occasion to provide Wabush Lake facilities, as I understand them, for some five years to come. Now the situation then, as we faced it, was that we were asked to abandon federal incorporation, become provincially incorporated and to enter into certain agreements, and one of the clauses which can be readily seen in the Carol Lake Wabush agreement is that the agreements made pursuant to that are not in any event to be assignable without the consent of all the parties to the agreement.

Senator BRUNT: Have you the number of that clause?

Mr. O'BRIEN: Yes. It is in the Wabush-Carol (Agreement) Act, 1959.

Senator MACDONALD: That is an act of what Government?

Mr. O'BRIEN: Of the Newfoundland legislature.

That agreement reads as follows:

10. This Agreement and any agreement contemplated hereby shall not be assigned by Wabush Railway, Land Company and Carol Company, or by any of them, in whole or in part, except pursuant to an agreement or agreements by and between the said companies and which said agreement or agreements may on the terms and conditions therein specified permit an assignment, in whole or in part. An assignment or proposed assignment or other transfer of this Agreement or the rights hereunder, in whole or in part, in violation of this clause shall be void and of no force and effect.

Senator REID: Which provision will take precedence once this brings you under federal jurisdiction?

Mr. O'BRIEN: That is one of the real problems that faces us. We are not here willingly, we are friendly to this competition, and our only concern having been asked to go under provincial jurisdiction, and having signed agreements which are not being made ineffective because of this bill, and I shall have to touch on the provisions later I would ask honourable senators to consider some of the implications of the bill: Any industry can secure a provincial charter setting itself up as a private railway and by the mere device of setting up a private railway under provincial power to connect with a federal railway, it can then, if this is correct, come before Parliament and ask to be declared to be for the general advantage of Canada, having itself essentially integrated with the federal railway. This is not the first time that mining companies have tried this, and I did not have a chance—as I say I made my notes last night—but there was a very well-known case that went to the Supreme Court of Canada, known as the Normetal Railway, where that mining company incorporated a provincial railway and did not apply to Parliament but went

to the Supreme Court to try to force the Canadian National Railways to recognize them as an integrated part of that line, and the Supreme Court said no. Now, what is the situation here: My friends talk of the jurisdiction of the Board of Transport Commissioners and I would like to mention briefly, before adverting to the bill: From the Wabush Lake area, on this 40 mile spur, certainly the rates will be completely controlled by the Wabush Iron Company. They can do what they like. It is their railway, and they do not need the Board of Transport Commissioners to tell them what they are going to charge on that line.

Senator BRUNT: What about the rental that has to be paid to the Northern Land Company?

Mr. O'BRIEN: That is a cost factor. The rates as such, a just and reasonable rate, will be a matter for straight negotiation between the Wabush Iron Company and the Wabush Lake Railway Company, both owned by the same interests. I don't think they need the intervention of a referee to settle what the rates will be.

Senator MACDONALD: Will the Carol Lake Company have some say in it?

Mr. O'BRIEN: No, we have nothing to say as to what the rates on the Wabush will be. We operate a private line to carry our own ore. We do not ask anyone to tell us what our rates will be and I suggest it will be the same for the Wabush Company.

Senator BRUNT: Might I ask who determines the 20 per cent under your formula?

Mr. O'BRIEN: That is a purely mathematical computation. You figure out what it will cost to maintain the railway and you divide it up according to the traffic carried or in any event 20 per cent.

Senator BRUNT: What about depreciation and other items of that nature.

Mr. O'BRIEN: That is all covered in the agreement.

Now, they have this 40-mile spur from the Wabush area to the Quebec North Shore, and then they travel some 220 miles on the Quebec North Shore and then they go for 20 miles on another spur to their own docks. Now, no one is going to have any jurisdiction as to what they are going to be charged on the Arnaud Railway, that is an arrangement between parent and subsidiary. The only question that is going to come up is what are the rates going to be on this 220-mile haul, and the Board of Transport Commissioners has complete jurisdiction to decide those rates, whether or not this company is declared to be for the general advantage of Canada. If the rates that we wish to charge on the Quebec and North Shore are not just and reasonable for that 220-mile haul, then they can go to the Board, when they have traffic to offer and "fix just and reasonable rates" and Quebec and North Shore are bound by those rates.

Senator MACDONALD: That is contrary to what the former witness said, is it not?

Mr. O'BRIEN: I do not think it was contrary. I do not think he intended it that way. He said he wanted to have jurisdiction over the whole haul from Wabush down to Point North, by the Board of Transport Commissioners, a through rate, and that is the point, that the through rate has not been mentioned, and which I suggest is the interest of my friends in making this application.

Where one or more railways carry traffic—let us say that you start off and ship the traffic over the first 300 miles on the Canadian National, the next 400 miles on the Canadian Pacific and then 200 miles on the New York Central, there is established a joint through rate. I have never seen a case before the Board of Transport Commissioners where that has been compelled,

but the Board of Transport Commissioners has power to compel it, and the Board has always universally held, so far as I know, that the division of the joint through rate is a matter for agreement between the parties, but they can compel the division. Now I wish to explain the interest of the applicant here in a joint through rate. If Canadian National acquires traffic and carries it 200 or 300 miles, and then delivers it to the Canadian Pacific or one or more other railways, the initiating carrier is ordinarily given a larger percentage of the joint through rate because it has stimulated the traffic. The situation with which we are faced here today is this.

Senator BRUNT: Do you object to that principle?

Mr. O'BRIEN: We do not object to the principle as between operating railways.

Senator BRUNT: You do not object to the originating railway getting a larger percentage?

Mr. O'BRIEN: No, if it is a railway industry, but the objection we have, and which I think applies throughout Canada is that every shipper who has a plant a little bit off the main line, by the device of building a private railway over to the main line can say, "I am a railway company" and he can have a provincial incorporation and say, "Therefore I am entitled to a bigger percentage of the joint through rate." Therefore that shipper in each case would be getting better rates than any shipper on the main line because he would be participating with a railway company. I respectfully submit that the joint through rate was one which was intended to be used between operating railways which were serving a whole territory and not intended to give a preference to any individual shipper who by building a spur for a short distance could come along and say, "I am a railway." Before I come to the bill...

Senator MACDONALD: Is that provision with respect to rates set forth in the Railway Act?

Mr. O'BRIEN: Yes.

Senator MACDONALD: So the board is bound by that?

Mr. O'BRIEN: The board has power to compel the establishment of a joint through rate.

Now, as to precedent. My friend said he had two or three pages of precedents here. May I draw your attention to the fact that the Department of Transport some years ago published a volume called, "Legislative history of the railways of Canada" in which there is a history of all railways and the statutes incorporated in it. I may be mistaken, but we have had that examined very carefully and we find no precedent for the present bill. You will find many, many case such as the one I believe was mentioned during the discussion on second reading of the Lacombe and Northwestern Railway. That was given as a precedent. You will find many, many cases where provincial railways have been incorporated and then they join their enterprise to a federal railway or an international railway and in the case of the Lacombe and Northwestern there was a lease of the whole enterprise to the Canadian Pacific and it thus became part of an integrated interprovincial railway. In such circumstances where effectively, what was before a small railway becomes part of a large railway, then it becomes a work for the general advantage of Canada.

We have searched in vain to find any case where a purely provincial railway, within provincial boundaries, which had no arrangements to lease or give operating rights to a federal railway has been declared for the general advantage of Canada. If I am mistaken, perhaps my friends will correct me. But we find no precedent of an enactment where a purely provincial company operating purely within a province was declared for the general advantage of Canada.

The LAW CLERK: What about the Grand Falls and Central Railway Company?

Mr. O'BRIEN: I will refer to the statutory history. What is the date of that railway?

The LAW CLERK: 1956.

Mr. O'BRIEN: This statutory history does not go that far, so I do not have that one before me.

The LAW CLERK: The railway is entirely within Newfoundland and was declared to be for the general advantage of Canada.

Mr. O'BRIEN: Let me put it this way: This is not a matter of a provincial railway being declared to be for the general advantage of Canada. This is an application for the incorporation of a federal railway; and in each case where you apply for the incorporation of a federal railway it is declared to be for the general advantage of Canada. The precedent that I mentioned was for a provincially incorporated railway, operating entirely within a province, coming before Parliament and asking to be declared for the general advantage of Canada. In those circumstances I found no precedent, including this one.

I may say, there have been unusual circumstances. I can give one from memory: The British Columbia Telephone Company was incorporated federally and declared to be for the general advantage of Canada. I suppose that was because of long distance services and other matters.

I don't know what all the circumstances are in the general cases where you ask for federal incorporation, but we have found no precedent where there was not an agreement with a federal railway or an international railway.

As you know, our great national railway systems really consist of a large number of small systems which are leased either for a long period of years, or in some cases in perpetuity. For instance, speaking of my home town, Montreal, the railway that runs out of the Windsor station is, as you know, the Canadian Pacific, which is really owned by the Ontario and Quebec Railway Company, and is leased in perpetuity to the Canadian Pacific Railway Company. And so it goes throughout the country.

It is in cases of that kind, where they were becoming part of a federally integrated system—an interprovincial system—that these applications have been considered and granted. If I am wrong on the question of precedents, I will gladly be corrected.

Senator MACDONALD: If this bill does not go through, I understood you to stay that the Wabush Company and the Arnaud Company would go to the Board of Transport Commissioners.

Mr. O'BRIEN: Yes.

Senator MACDONALD: And get a rate.

Mr. O'BRIEN: Get a rate on the Q.N.S. and L.R.

Senator MACDONALD: Would they then get the benefit of the business originating on the Wabush Railway?

Senator BRUNT: No.

Mr. O'BRIEN: I don't quite follow. They would have all of their own business that they were carrying on their own lines.

Senator MACDONALD: What is the difference, if this company is incorporated federally? What disadvantage will it mean to the railway company?

Mr. O'BRIEN: That lies in the agreements we signed, and which I was about to speak to.

The agreements we have signed, are, first, contemplate that there will be a running rights agreement both in favour of and binding the Wabush Lake

Railway Company in perpetuity. As my friend quite readily said, under the Railway Act the running rights agreement can be only for 21 years. Frankly, I do not know, because I am not an expert on statutory interpretation. I do not know which of these acts would apply if this bill were enacted. Section 3 of the bill says:

“Nothing herein contained shall be construed so as to affect or render inoperative any of the provisions of the Acts of the Legislature of the province of Newfoundland.”

Then section 4 follows:

“Notwithstanding section 3, each of the Companies... shall hereafter have all the powers, rights and immunities and be subject to all the obligations provided for in the Railway Act.”

Senator BRUNT: Mr. O'Brien, we have our Law Clerk here. Maybe he would care to give an opinion on it now?

The LAW CLERK: I would prefer to have Mr. O'Brien continue.

Mr. O'BRIEN: I may say that one of the reasons why my instructions came late in this matter is because of the difficulty that has been encountered in trying to get an opinion on interpretation. I may say there are contrary interpretations even now.

Does section 3, by its terms, delete all of the rest of the act in so far as it would affect the agreements, under Newfoundland law or do the opening words of section 4, “Notwithstanding section 3” have the effect of meaning the Railway Act is applicable to the extent that it is in conflict with the other provisions of this act?

My friend, as I understood him, said that the Railway Act would apply, and it would put to an end the agreement which we have that there is to be a running rights agreement in perpetuity. That is not the opinion we have as to the interpretation of section 4.

The second point is: You will see by section 5 they have the right to enter into any agreement with any other company, whether within the legislative authority of the Parliament of Canada or not, for selling, conveying or leasing to such a company the railway and railway undertaking of the company.

Now honourable senators, we were asked to enter into an agreement, and we did; and one of the conditions validated by the statute is that there is no right of assignment. Unwillingly we entered into an agreement, but we did so on the grounds that we would be dealing with one company, and one company only.

Senator ISNOR: Why do you say “unwillingly”?

Mr. O'BRIEN: Because we wanted to have a federal charter, and we had applied for it. We entered into that agreement on the basis that we were going to be contracting and living with one company. And here, as I suggest, by a stroke of the pen Parliament declares that it has complete power to sell or lease to anyone.

Again, I am not going to say what is the relationship between section 3 and section 5, but I wish to point out the perplexities with which we are faced in the light of the fact that we were asked to abandon federal jurisdiction, and make agreements with one company which we were careful to see, and the Government of Newfoundland was careful to see, would not be assigned.

Now honourable senators, there is going to be no traffic for the Wabush Lake Railway Company or the Arnaud Railway Company to ship for some five years.

My friend says financing is important, and we readily accept that. But what is the haste in coming here with a bill which in our view has a far-reaching effect? We are not speaking of bad faith; we have the greatest

confidence in our friends—but what is the purpose of hurrying here a few months after these agreements have been signed, to ask that a statute be passed which in our view may have a far-reaching effect? I don't know how long it would take us to analyze this bill, which I saw for the first time on, I think, Friday last, in relation to all the agreements we have.

I suggest two things: first, whatever the good faith of the applicant here, there is no reason for this haste. If it goes before the Board of Transport Commissioners and finds that by reason of decisions there given it is being placed in an unfortunate position because of the rates allowed by the Board of Transport Commissioners over the Quebec and North Shore, they can then come back here and say the reason is, they could say we had an unfortunate decision which we think would not be the same if there was another jurisdiction.

May I say on the question of the other jurisdiction I am not so sure I agree with my friends as to the effect of a declaration that a work is one for the general advantage of Canada, and again I must speak somewhat from memory.

Senator BRUNT: Would you admit this is for the general advantage of two provinces?

Mr. O'BRIEN: No. It is all within one province.

Senator BRUNT: No, both Newfoundland and Quebec are in here.

Mr. O'BRIEN: There is a company which has a spur line in Newfoundland and a spur line in Quebec. I don't think because a Canadian industry has a spur line in the province of Quebec joining the C.N.R. and another spur line in Edmonton joining the C.N.R., so as to get their traffic on a private line, that that would make them a work for the general advantage of Canada.

Senator BRUNT: I am not speaking of the general advantage of Canada, but of the general advantage of two provinces.

Mr. O'BRIEN: I will concede immediately that when you talk of a work being for the general advantage of Canada you do not have to get the ten provinces in, sir. I did not understand that was what you were saying.

Senator BRUNT: Would you concede that this is for the general advantage of two provinces?

Mr. O'BRIEN: I cannot concede that. I say there is a company which has a spur line in two provinces that want something, but I don't think the work as such is for the general advantage of two provinces or of Canada.

Senator BRADLEY: Were you people consulted about this proposed change or given any intimation of it?

Mr. O'BRIEN: I speak with hesitation because I have not had all the communications but some information came to our attention in December to the effect that the question had been raised with representatives of the government of Newfoundland about applying here.

Senator BRADLEY: But you were not consulted by the applicant?

Mr. O'BRIEN: The applicant has in recent weeks given us a copy of the bill, which has been amended, but I don't think by the applicant—it was given to us about two or three weeks ago. I think that is right, is it not, Mr. Benson?

Mr. BENSON: Five weeks ago, when it was first drafted.

Mr. O'BRIEN: The copy I saw for the first time in this form was on Friday or Monday, and one of the important things in it is "notwithstanding section 3", which I do not think was added to it by the applicant. There was that addition made, and they added "undertakings" to "works". And this, with respect, I do not think falls within the terms of the British North America Act, but that is not my concern. The question was asked as to the effect of a declaration

that a work was to the general advantage of Canada and that it takes its corporate powers out of the provincial jurisdiction, and with respect I do not think it does.

I have a note here of one railway which by reason of leases to federal railways was declared to be for the general advantage of Canada. It was a British Columbia railway and its charter was later cancelled by the Legislature of British Columbia.

I understand, and I speak with some hesitation because I have not had an opportunity to refer to the authorities recently, there is a distinction between the enterprise, the works, and the corporate entity. The corporate entity remains subject to the jurisdiction of the province which incorporated it, and the works, the operation of the railway, become subject to federal jurisdiction.

Honourable senators, I thank you for the time you have given me. Our position is simply this: we have agreements which we have signed and which potentially, at least, can be avoided or can be changed without our consent, and that consent was required by the statute of the province of Newfoundland.

Senator POWER: Why did your clients not undertake to operate as a side line the road from Pointe Noire to the junction with your railway? It is only a distance of twenty miles.

Mr. O'BRIEN: We were not asked.

Senator POWER: A branch line of twenty miles is not a great undertaking for a railroad such as yours which has 200 or 300 miles of rail. You would not be in between then, would you? You would have some objection, I take it, on account of the fact a good part of the traffic originates at the eastern end, the Newfoundland end, but you would not be in the same difficulty with the idea of being an in-between railroad and having to carry the products of two companies.

Mr. O'BRIEN: I think we have to distinguish in our minds the question of a railway as such and a shipper who has put in a private line to service his own facilities, and that, effectively, is what we have here.

Senator BRUNT: What happens if this bill should not pass and the other people and yourselves cannot agree on a rate? What will happen to the iron ore?

Mr. O'BRIEN: Well, they will not have any for five years. They can go to the Board of Transport Commissioners and ask the Board to declare what is a reasonable and justifiable rate for the 200-mile run.

Mr. PATILLO: When can we go?

Mr. O'BRIEN: You can go as soon as you have traffic.

Mr. PATILLO: We don't know what it will cost.

Mr. O'BRIEN: I respectfully suggest my friends cannot go as a railway or shipper or anything else before they have any traffic to offer.

Mr. PATILLO: You would be surprised.

Senator BRUNT: We can get this on rebuttal.

Mr. O'BRIEN: Honourable senators, it is quite obvious that you have the situation here where there are two large competitors, and I do not hesitate to say they are looking after their own interests. There has been a remarkable amount of co-operation in relation to this 40-mile spur for servicing the Wabush-Carol Lake area, but what we wish to avoid is to have that co-operation upset by a unilateral act when everything contemplated to be done in the future was to be bilateral.

Senator ISNOR: Mr. O'Brien, you mentioned agreements several times. What was the date of those agreements?

Mr. O'BRIEN: They are all within the last six months. The statutes were enacted by the Newfoundland Government in June and the basic agreements were incorporated there and there have been some subsidiary agreements as to construction of the railway. There is a letter of intent as to what some of the other agreements would be, but they are all intended to be bilateral and the whole understanding was that nothing could be effected unilaterally by any party, and to what we respectfully object.

The ACTING CHAIRMAN: Is that so stipulated in the agreement?

Mr. O'BRIEN: Yes; it is stipulated in the act.

Senator CONNOLLY (*Ottawa West*): Do I understand from what you have said that the only rates these two applicant companies cannot control, except through agreement or by referring to the Board of Transport Commissioners, are the rates on the main line, the 200-odd mile long line?

Mr. O'BRIEN: They are the rates which will be under the control of the Board of Transport Commissioners.

Senator CONNOLLY (*Ottawa West*): But the rates on the subsidiary line, there is no problem for the applicant with respect to these?

Mr. O'BRIEN: They have no problem because they are fixing the rates themselves.

Senator BRUNT: Yes, but on a through rate it is all taken into consideration.

Mr. O'BRIEN: That is true, if they are treated as railways in the sense of railways rather than as industrial spurs.

Senator MACDONALD: Did you say that under the terms of your agreement that neither company can sell, convey or lease to any other company the railway undertaking?

Mr. O'BRIEN: Under the terms of the Carol-Wabush (Agreement) Act, none of the rights can be assigned to any other person without joint consent, and if so assigned are void.

Senator MACDONALD: Well, clause 5 of the bill gives the company applying for this bill the power to sell, convey or lease to any other company the railway and railway undertaking of the companies. Is that contrary to the terms of the agreement?

Mr. O'BRIEN: I will read section 10 of the Wabush-Carol Lake (Agreement) Act:

10. This Agreement and any agreement contemplated hereby shall not be assigned by Wabush Railway, Land Company and Carol Company, or by any of them, in whole or in part, except pursuant to an agreement or agreements by and between the said companies and which said agreement or agreements may on the terms and conditions therein specified permit an assignment, in whole or in part. An assignment or proposed assignment or other transfer of this Agreement or the rights hereunder, in whole or in part, in violation of this clause shall be void and of no force and effect.

Senator MACDONALD: Then if the railway company would purport to assign their facilities according to this agreement it would be null and void?

Mr. O'BRIEN: The question I ask, Senator Macdonald is: What does this federal act do to our provincial act when it starts off by saying that "nothing herein contained shall be construed so as to affect or render inoperative any of the provisions of the acts of the legislature of the province of Newfoundland, and section 4 provides that, notwithstanding section 3 each of the companies shall hereafter have all the powers, rights and immunities and be subject to all the obligations provided for in the Railway Act, and then, having power to sell, according to Article 151 of the Railway Act.

Senator MACDONALD: It is certainly confusing to me but I am not so sure that all we are giving the railway companies power to do is to sell their undertaking and then of course after they sell their undertaking, and it seems to me endeavour to assign this agreement, then I think it would be contrary to the terms of the agreement and the other party could either get damages or have the agreement declared null and void.

Mr. O'BRIEN: I am hopeful that that would be the interpretation. Frankly that is the problem that impels us to appear and say that if it appears at some time that some legislation is necessary we would be very glad to co-operate. We think that this is a unilateral departure from what we thought was to be a bilateral agreement, and secondly we do not think the time is now, not until they have had an opportunity to see what can be done before the Board of Transport Commissioners.

Senator MACDONALD: Do you think there could be an amendment to clause 5 which would protect matters as far as the agreement is concerned?

Mr. O'BRIEN: I would say this, that in my view the matter requires such study that I would not like to say. We have had directly conflicting opinions as to the interpretation of the statute if it is enacted.

Now, if the words were to go in there, and if it was to be clear that this agreement was never to be affected, then you would have in section 4 ". . . subject to section 3", and then in section 5 it would read, ". . . subject to section 3 again." Then I think the agreement would be more safe.

Senator MACDONALD: Mr. Chairman, I would suggest to the witness that the two companies might take under advisement the possibility of amending the bill.

Mr. DE ROCHE: We will be happy to make that amendment.

Senator BRUNT: Mr. Chairman, we are not going to get through consideration of this bill today and I suggest that we adjourn now until next week.

The ACTING CHAIRMAN: Senator Connolly, you had a question?

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, what I was going to say was something along that line. We have had a very fine presentation of the applicants' position and now we have had an equally clear presentation of an opposing position, and our own position in respect of matters like this is not light. We have to take the responsibility. There may be other people we should hear before we decide what should be done. Perhaps in the meantime, if we do adjourn, the parties themselves can have some further discussion about the measure. Perhaps amendments are required. Perhaps the bill is premature—who knows? We do not at the moment because we have heard the two views. I would suggest that we adjourn to assemble again at the call of the Chair, when further evidence is available and in the meantime we have a record that we can study.

The ACTING CHAIRMAN: What is the feeling of the committee on this?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Shall we adjourn to the call of the Chair?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: We will now adjourn. The interested parties of course will be given due notice of our next meeting.

The committee adjourned.

3
Third Session—Twenty-fourth Parliament

1960



THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the

Bill S-24, intituled:

An Act respecting Wabush Lake Railway Company Limited
and Arnaud Railway Company.

The Honourable Harold Connolly, (*Halifax North*),
Acting Chairman.

THURSDAY, MAY 12, 1960

No. 2

WITNESSES:

Mr. A. S. Pattillo, Q.C., Counsel for the Wabush Lake Railway Company and Arnaud Railway Company; Mr. John L. O'Brien, Q.C., counsel for the Carol Lake Company; Mr. W. E. P. DeRoche, Q.C., counsel for the Wabush Lake Railway Company and Arnaud Railway Company; Mr. Keith Benson, Secretary of the Wabush Lake Railway Company Limited and Arnaud Railway Company.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

THE STANDING COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable ADRIAN K. HUGESSEN, *Chairman*

The Honourable Senators

| | | |
|-----------------------------------|------------|--|
| *Aseltine | Gladstone | Molson |
| Baird | Gouin | Monette |
| Beaubien | Grant | Paterson |
| Bishop | Haig | Pearson |
| Blois | Hardy | Power |
| Bouffard | Hayden | Quinn |
| Bradley | Horner | Raymond |
| Brunt | Hugessen | Reid |
| Buchanan | Isnor | Robertson |
| Campbell | Jodoin | Roebuck |
| Connolly (<i>Halifax North</i>) | Kinley | Smith (<i>Queens-</i> <i>Shelburne</i>) |
| Connolly (<i>Ottawa West</i>) | Lambert | Smith (<i>Kamloops</i>) |
| Courtemanche | Lefrançois | Stambaugh |
| Dessureault | *Macdonald | Veniot |
| Emerson | McGrand | Vien |
| Euler | McKeen | Woodrow—(50) |
| Farris | McLean | |
| Gershaw | Méthot | |

50 members
(QUORUM 9)

**Ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, March 17, 1960.

“Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator White, that the Bill S-24, intituled: “An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator White, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, May 12, 1960

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.30 a.m.

Present: The Honourable Senators Hugessen, *Chairman*; Bouffard, Bradley, Brunt, Buchanan, Connolly (*Halifax North*), Connolly (*Ottawa West*), Courtemanche, Dessureault, Euler, Farris, Gershaw, Gouin, Haig, Isnor, Kinley, Lambert, Lefrançois, Macdonald, McGrand, McLean, Reid, Smith (*Kamloops*), Stambaugh, Vien and Woodrow—26.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel. The official reporters of the Senate.

At the request of the Honourable Senator Hugessen, Chairman of the Committee and on Motion of the Honourable Senator Euler, the Honourable Senator Connolly (*Halifax North*) was elected acting chairman.

The following Bill was further read and considered.

Bill S-24, An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company.

Further heard in explanation of the Bill were Mr. A. S. Pattillo, Q.C., Counsel for the Wabush Lake Railway Company and Arnaud Railway Company; Mr. John L. O'Brien, Q.C., Counsel for the Carol Lake Company; Mr. W. E. P. DeRoche, Q.C., Counsel for the Wabush Lake Railway Company and Arnaud Railway Company; Mr. Keith Benson, Secretary of the Wabush Lake Railway Company Limited and Arnaud Railway Company.

On Motion of the Honourable Senator Vien, the Honourable Senators Brunt, Euler, Farris, Hugessen and Vien were appointed a subcommittee to consider amendments to the said Bill and report their findings to the Main Committee at its next meeting.

At 1.15 p.m. on Motion of the Honourable Vien the further consideration of the Bill was postponed to Thursday, May 19th, 1960, at 10.30 a.m. in room 256-S.

Attest.

Gérard Lemire,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS
EVIDENCE

OTTAWA, Thursday, May 12, 1960.

The Standing Committee on Transport and Communications, to which was referred Bill S-24, respecting the Wabush Lake Railway Company Limited and Arnaud Railway Company, met this day at 10.30 a.m.

Senator A. K. HUGESSEN in the Chair.

The CHAIRMAN: Gentlemen, would you please come to order? We have now to consider for the second time Bill S-24, respecting the Wabush Lake Railway Company Limited and Arnaud Railway Company. Honourable senators will recall that this bill was before us on March 24 at which time, in my absence, Senator Harold Connolly acted as Chairman of the meeting.

I am going to suggest to the meeting that Senator Connolly be asked to resume the Chair on this second day, for the very obvious reason he is much better acquainted with what happened at the first meeting than I am. There is a second reason why I make this suggestion. I found on looking over the minutes of the previous meeting on March 24 that one of the parties who is sponsoring this bill is Pickands Mather and Company of Cleveland, two of whose officers were present at the first meeting and are, I assume, present here today as well. It so happens, honourable senators, that the law firm of which I am the head some years ago did a good bit of legal work for Pickands Mather and Company of Cleveland in connection with extensive properties the company was acquiring in the province of Quebec. Under these circumstances I feel it would be inappropriate for me to act as Chairman of a committee that is considering a bill involving this company. I would therefore welcome a motion from the meeting that Senator Harold Connolly act as Chairman on this occasion.

Senator EULER: I so move.

Hon. SENATORS: Agreed.

Senator MACDONALD: I think we should add that it is not because we have no confidence in our regular Chairman. We have complete confidence in him.

Senator HAIG: I think the Chairman has done the right thing.

Senator EULER: I would have our Chairman know I made the motion in accordance with his own request. I have every confidence in him personally.

Senator HUGESSEN: I thank the committee members for their remarks.

Senator Harold CONNOLLY (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Gentlemen, we have an amazing array of talent in the back benches, and I suppose they are anxious to get at this matter. The last time we met I think Mr. J. L. O'Brien was the last to speak. Had you finished at that time, Mr. O'Brien?

Mr. J. L. O'BRIEN: I had at that time, yes sir.

Senator FARRIS: Mr. Chairman, some of us who are here this morning were not here the previous time. I would like a general outline of what it is about, if possible.

The ACTING CHAIRMAN: Senator Farris, have you a copy of the evidence taken previously?

Senator FARRIS: I did not know there was a copy.

The ACTING CHAIRMAN: There are copies right here, and I will see that you get one immediately. Are there any members of the committee who would want to discuss this matter before we call any of the witnesses?

Senator MACDONALD: Mr. Chairman, I wonder if it would be possible to have a brief statement from someone as to what the proposal is, so that we could refresh our memories. I am not too clear on it myself.

Senator BRUNT: If you wish, I could ask Mr. Pattillo to give a very brief statement as to the purpose of the bill and why it was introduced in the Senate, and the reason for asking that it be sent down to the Commons.

Senator MACDONALD: Without argument?

Senator BRUNT: Yes; just a brief statement on it.

A. S. Pattillo, Q.C., Counsel for Wabush Lake Railway Company Limited:

Mr. Chairman and honourable senators: The purpose of the bill is to take two railways, one incorporated by the province of Newfoundland, the other incorporated by the province of Quebec. The Wabush Railway which is incorporated by Newfoundland, proposes to run trains from Wabush Lake to the Quebec North Shore Railway a distance of 40 miles. The Arnaud Railway will extend from the Quebec North Shore Railway near Seven Islands and run a distance of 20 miles to docks which are to be built at Pointe Noire. Now, what we are trying to do here is to have these two railways federalized, because they will both be connecting with the Quebec North Shore and Labrador Railway, which is a federal railway, and the prime reason we are here is that if all railways are federal railways then the Board of Transport has the power and authority to determine the cost of moving the ore over these railways. As long as there are two provincial railways and one federal railway the Board of Transport does not have that authority. We are making an investment up in the north in Labrador which is going to cost more than \$200 million. We have got to make that investment quickly; we have to have everything ready to go by 1965. Now, we want to know, we need to know, in making that investment, what our costs are going to be, and one of our most important costs is how much is it going to cost us to move our concentrates from Wabush Lake down to the docks at Pointe Noire. We cannot get that matter determined unless we can either reach satisfactory agreements with the persons who are the carriers, or go before the Board of Transport Commissioners and have them determine it. Now, what we want to do is to be put in a position that we can go there, and go there as soon as we are permitted under the statute which sets up that board. I think that briefly is why we are here and what is the purpose of the legislation.

The ACTING CHAIRMAN: Would you tell us in what manner this bill originated, Mr. Pattillo?

Mr. PATTILLO: Well, I could perhaps give up a little background about that. As I explained to you, the Wabush Railway Company is a Newfoundland company incorporated by the statutes in Newfoundland, and when we came to the conclusion that we had to have it federalized we went to the Newfoundland Government and explained to them what we were seeking to do and why we were seeking to do it, and they have no objection to our being here and introducing this legislation here. We then went to the Quebec Government and explained to them, they being the incorporators by provincial statute of Arnaud Railway, what we were seeking to do and why, and they told us that they had no objection to our being here. The reason that

we have come here with this legislation now is that as quickly as we can we want to know what our position is and what our cost position is. We are not endeavouring, and we want to make this very clear, to change our status in any other way to put us under the authority of the federal Government and Board of Transport in the future.

Senator EULER: Is any one objecting?

Mr. PATTILLO: Oh, yes.

Senator MACDONALD: I thought we might get a statement from some one who is objecting, in a similar way.

Senator CONNOLLY (*Ottawa West*): Mr. Chairman, I read the evidence given at the last hearing, and I want to make one point clear in my own mind, if I might. At the present time the 200-mile railway owned by the opponents here is a federal railway incorporated as a common carrier, I believe?

Mr. PATTILLO: Yes.

Senator CONNOLLY (*Ottawa West*): In your present position your two companies could, I suppose, apply to the Board of Transport Commissioners to set a rate over that part, could it not?

Mr. PATTILLO: No, you cannot—

Senator CONNOLLY (*Ottawa West*): Is it only by contract?

Mr. PATTILLO: We can only proceed by contract. The only time we can go to the Board of Transport is when a shipper has something to ship, and we are not going to be in a position to go to the Board of Transport. The railways would not be able to go. It would have to be the ore company itself when it was ready to be a shipper, and by that time we have spent all our money. Now, that is the very thing we don't want to be put in a position of having to wait to find out about.

Senator VIEN: In what way would the federal incorporation change the situation?

Mr. PATTILLO: Then the Board of Transport has the right to deal with through rates, running rights, all that sort of thing.

Senator VIEN: But they would not do that before you are ready to ship?

Mr. PATTILLO: Oh, we are not dealing with shipping then, we are dealing with rights of respective railways.

Senator VIEN: But they would not give you through rights. If I understood correctly, you stated that you wanted this incorporation with a view to obtaining a determination of the cost of transporting the ore; is that correct?

Mr. PATTILLO: That is.

Senator VIEN: All right. Supposing this incorporation is granted, you could not get a determination of a through right from the Board before you are ready to ship?

Mr. PATTILLO: Well, Senator, we think, with respect, that we can. We think that we will then be in a position to go to the Board, and go quickly to the Board.

Senator FARRIS: You are suggesting that would make a difference in the present situation?

Mr. PATTILLO: That is right.

Senator VIEN: Under the Railway Act you could obtain a determination of those rates by a joint sitting of the Board of Transport Commissioners, and the Quebec Transport Commission.

Mr. PATTILLO: And the Newfoundland one. But Senator you will agree with me that that would be a very clumsy way to do it and in fact one which never has been done before.

Senator VIEN: I agree.

Mr. PATTILLO: And as my partner, Mr. DeRoche, says, in Newfoundland there is no such board set up.

Senator BOUFFARD: Would you be able to give me the reference to the Railway Act. What is it that makes such a difference, as against a provincial and a federal ruling?

Mr. PATTILLO: If I may say so, I would rather not get into that today. What my partner, Mr. DeRoche, and I had agreed to do was that Mr. DeRoche was going to deal with the whole matter of the reply that arose out of Mr. O'Brien's remarks the other day, and I would rather leave that to Mr. DeRoche, if you do not mind. I have come here today to give only this preliminary statement that Senator Macdonald asked for.

Senator VIEN: How are rates determined in Newfoundland if no authority is set up for that purpose?

Mr. PATTILLO: So far as I know, there is not anything in Newfoundland that requires an authority to be set up at the present time—there is not any railway operating in Newfoundland which has to have its rates determined by a provincial authority.

Senator VIEN: If you have a provincial charter for a provincial railway and operate it within Newfoundland territory, how would you proceed to get rates determined?

Mr. PATTILLO: Well, Senator Vien, if I may be permitted to ask my partner, Mr. DeRoche, to deal with that?

Senator MACDONALD: Mr. Chairman, probably, if Mr. Pattillo is through, we might hear from someone representing the opposing interests, just a brief statement.

The ACTING CHAIRMAN: Are there any other questions of Mr. Pattillo and his associates now?

Senator VIEN: Mr. Chairman, I would simply point out in fairness to Mr. Pattillo that probably if there is no authority to fix rates in Newfoundland they would be fixed by agreement between the carrier and the consignee.

Mr. PATTILLO: There is no question that the parties can do anything by agreement, but agreements sometimes are difficult to make.

Mr. John L. O'Brien, Counsel for Quebec North Shore and Labrador Railway and the Carol Lake Company:

Thank you, Mr. Chairman and honourable senators.

I understand that Mr. DeRoche is going to give some of the details on this, so I will limit my remarks at the moment to a general exposition of the reasons for our opposition to this, subject, with your permission, to go into details later.

The situation briefly is this, and may I mention that when I was here at the last meeting of the committee I had with me Mr. William H. Durrell, the president of Carol Lake Company, and in the interval Mr. Durrell, for reasons of health, has had to go into partial retirement and he is now over in Europe. I have had to diversify somewhat the assistance that I am having today, and I have with me Mr. Jules R. Timmins, who is president of several of the companies connected with the development of iron ore. I have Mr. C. E. McManus, who is general manager of Carol Lake Company, I have Mr. J. A. Little, who is general manager of the Quebec North Shore and Labrador Railway Company, and I have two associates from my own office, Mr. Robert S. O'Brien, and Mr. John H. Hannan.

Briefly, the situation is this: You will recall that Labrador until 10 years ago was an uncharted frozen waste, when a group of Canadian companies,

principally Labrador Mining and Exploration Company, and the Hollinger Gold Mines, and then Hollinger Exploration Company, Ltd. went in and expended substantial amounts of money there and they came to the conclusion that the properties could be developed.

To develop them needed money and to get the money they had to be assured of long-term ore contracts. There was not sufficient demand in Canada and they moved down into the United States and they secured the co-operation of the M. A. Hanna Company of Cleveland, which in turn secured from several large United States steel companies long-term commitments to buy ore, and in this way were able to raise the necessary monies to develop the place.

Up to the present time and with the work now underway there is and will be an expenditure in the area of \$500 million by my clients and their associates.

One of the immediate things that had to be done if this iron ore was to be developed and sold was to find a method of transportation, and the ore body that seemed most feasible for the development at the time was some 360 miles north of the St. Lawrence River. The biggest civilian air lift in history was organized, and the only railway built by air was put in there for 370 miles from Sept Iles on the St. Lawrence River up to Knob Lake, now known as Schefferville, 375 miles north.

Senator FARRIS: Is that the Wabush—

Mr. J. L. O'BRIEN: No, that is the Quebec North Shore and Labrador Railway Company. That railway commences in the province of Quebec, traverses the province of Newfoundland, and re-enters Quebec. Application for federal incorporation was made and granted, and that railway is subject to all of the restrictions in the Railway Act concerning unjust discrimination, and other matters.

Senator MACDONALD: Is that the railway owned by your company?

Mr. J. L. O'BRIEN: It is owned entirely by the interests I represent.

Now, what I have been told was unmapped country, and what many people said was impossible to develop, has been developed, and there is being shipped over the Quebec North Shore and Labrador Railway from 10 million to 13 million tons of ore a year, some of it being used in Canada—

Senator FARRIS: I do not understand that, Mr. O'Brien. There are only two companies on this—

Mr. J. L. O'BRIEN: We are opposing it—the Quebec North Shore and Labrador Railway Company. The Quebec North Shore and Labrador Railway Company is a wholly-owned subsidiary of the Iron Ore Company of Canada Limited, and the Iron Ore Company of Canada Limited is, in turn, a joint venture of Labrador Mining and Explorations Limited, Hollinger Consolidated Gold Mines Limited—my memory is not that good; I will have to refer to my notes—Hollinger North Shore Exploration Company Limited. Those are the Canadian companies. And then there is Hanna Mining Company of Cleveland, and a group of United States steel companies.

Senator BRUNT: How many United States steel companies?

Mr. J. L. O'BRIEN: I shall have to ask Mr. McManus. He tells me the number is five.

Senator BRUNT: Thank you.

Mr. J. L. O'BRIEN: I might say in that connection that although assistance from the United States financial interests was secured, the Canadian interests still have a very substantial interest in, and a major part of the management of, the railway and the mining operations in Canada.

Senator BOUFFARD: Who has the most—the United States steel companies or the Canadian companies?

Mr. J. L. O'BRIEN: Mr. Durrell has retired, and Mr. William Bennett has been appointed. I think his name is familiar to many of you, honourable senators. He was head of the uranium project for the federal Government for some time, and more recently he was president of Canadian British Aluminum Company, and upon his retirement from that position only a few weeks ago he was appointed to the position of vice-president and general manager of the Iron Ore Company of Canada with subsidiaries. Mr. Bennett has done what we all would like to do, and that is that in the interval between leaving his other position and taking up the active management of this he has decided to intersperse it with a holiday, and at present is far away from here. I do not think his familiarity with the details would be sufficient at this stage to make him of great assistance to the honourable senators on a question of detail.

Senator BRUNT: Who has the control—the American companies or the Canadian companies?

Mr. J. L. O'BRIEN: No one has control.

Senator BRUNT: The stock is divided between the American corporations and the Canadian corporations.

Mr. J. L. O'BRIEN: Yes, sir, but the American corporations are corporations which themselves are in active competition with one another; they do not act—if you want to know what proportion of the interest is down in the United States and what is up here then I will say that roughly 25 per cent of that approximate amount of \$500 million is the responsibility of the Canadian people who put it in, and roughly 75 per cent is the responsibility of some five or six American corporations which are not associated except that they have made long-term commitments and have put in money.

Senator BRUNT: Can we presume that the stock is divided on the same basis?

Mr. J. L. O'BRIEN: Yes, it would be fair to presume that.

Now, coming to the situation which we now have, the iron ore deposits in the Knob Lake (Schefferville) area are high grade iron ore deposits, and they seemed to be preferable at the time of this development. And may I say that this whole development was carried on between the end of 1950 and 1954, and to give just an approximate idea of what had to be done, half a billion dollars which is being invested in this project may be related to the St. Lawrence Seaway development in somewhat the same period, the estimated Canadian share of which I am told amounted to between \$600 million and \$700 million. So it is a tremendous project.

Senator FARRIS: Would it interrupt your presentation—

Mr. J. L. O'BRIEN: No, sir, I have no prepared notes.

Senator FARRIS: Could you jump ahead and tell us what your objection is?

Mr. J. L. O'BRIEN: The objection arises from certain facts which I will give you very summarily. A few years ago it was seen that by reason of technological development, low-grade iron ore deposits which were roughly 40 miles to the west of the Quebec North Shore and Labrador Railway could now be economically developed and sold. The Iron Ore Company having explored and put in a pilot plant, decided to put in a concentrating plant over there to use this low-grade deposits. In February, 1959, knowing we had to have transportation, we presented a petition to Parliament for the incorporation of a new federal railway which would join up the Quebec North Shore and Labrador Railway with the Carol Lake development, which is the development which my clients are presently carrying on in the Carol Lake area 40 miles west of the Quebec North Shore and Labrador Railway.

May I say that the railway projected, and concerning which the petition was presented to parliament, was one which was to cross again the province of Quebec and the province of Newfoundland in going over to the Carol Lake area.

After the petition was lodged representations were made to my clients by representatives of the Government of Newfoundland that they would prefer our clients join up with the Wabush iron ore group, the Pickands Mather group, which concurrently was looking into the question of future development in the Wabush Lake area.

What we were asked to do was to abandon our application for federal incorporation and instead go and get an incorporation under Newfoundland law and build a railway of 40 miles distance entirely within the province of Newfoundland, and have all the companies subject to Newfoundland jurisdiction. We did that.

There are three steps which I explained the last time but perhaps I should explain them now for those honourable senators who were not here on that occasion. There were three steps necessary in virtue of the suggestion made and the agreement made. The Wabush Iron Company had already done a certain amount of clearing for a right-of-way for a railway they thought they would need. It was agreed that a company would be formed called the Northern Land Company, 50 per cent of which was to be owned by Wabush Iron Company and 50 per cent of which was to be owned by the Iron Ore Company of Canada. The Northern Land Company was to build a 40-mile strip of right-of-way, a spur line off the Quebec North Shore and Labrador Railway which would service both the Wabush and the Carol Lake area.

The Northern Land Company which was to build the right-of-way and lay the track was never intended to operate a train. Secondly, the Wabush Lake Railway Company which was also controlled and, I think, solely owned by Wabush Iron Company, was to make a running rights agreement in perpetuity with the Northern Land Company, and it was to be a common carrier under Newfoundland law. It was to carry the products of the Wabush Iron Company and, in addition, such other traffic which might be there which, I may say, would be nothing but the Wabush Iron Company and its townsite if one were constructed.

At the same time a third company was formed called the Carol Lake Company, which is described as being a private mining carrier, which also signed a running rights agreement in perpetuity over the Northern Land Company's right-of-way. That company, by its terms, is only allowed to carry traffic emanating from or destined to Carol Lake where my friends are now building a townsite and a concentrating plant.

A statute was enacted in Newfoundland called the Wabush-Carol Agreement Act—I may be slightly out in the wording but effectively it was that—which validated these agreements and which provided that none of the agreements between the parties should be assigned without the consent of all parties.

All of this was done in June of 1959, just last year. There were certain agreements to be made pursuant to those statutes, and some of them even signed. I will not go into the details now.

My friends now come forward and say "We want to be made subject to federal jurisdiction" and when I have occasion to revert to the details I will show there is no precedent for this in the history of Canada. They say "We want to be made subject to federal jurisdiction" and among the powers they have put in there is the right to assign all of their enterprise.

We say that at the request of the Newfoundland Government we abandoned a federal application and agreed that we would be subject to Newfoundland law. Having signed it and being in there—the right-of-way being almost

finished with half the cost to be ours—we say that the Wabush group, the Pickands Mather group, should not be able to come unilaterally and depart from an agreement which was intended to be one where we would always be the sole bedfellows unless we both consented otherwise, and that is our basic agreement.

I do not want to get into detail but in the event anyone thinks the railway rates up there are high may I say they are not high and I will deal with that if anyone suggests they are.

Senator MACDONALD: This agreement you made is now of no effect?

Mr. J. L. O'BRIEN: We discussed that slightly before. There are two sections in this bill and one of them, section 3, says, "Nothing herein contained shall be construed so as to affect or render inoperative any of the provisions of the Acts of the Legislature of the province of Newfoundland, or of the Act of the Legislature of the province of Quebec.

Section 4 of the bill says, "Notwithstanding section 3, each of the Companies and any corporate successor or successors thereof... shall be subject to all the obligations provided for in the Railway Act..."

Now, when my friends were presenting this bill the last time they said that one of the effects of this—and I don't know what it means because one section seems to controvert the other—would be that their agreement in perpetuity would be limited under the Railway Act to an agreement of 21 years. They said "That is a benefit we have to give up", and we say they have benefits there but they also have obligations, and an obligation is that they will maintain this in perpetuity or they will fulfil all their obligations under it. That is what the agreement says.

So our basic objection to this is that by the device of asking to have this 20-mile spur in one place and a 40-mile spur in the other, they are asking to do things which—and I don't think basically in their minds the present management of this operation wants to depart from this—

Senator FARRIS: Excuse me. This bill does not provide for the 21-year limitation, does it?

Mr. J. L. O'BRIEN: No, but the Railway Act does and it is made subject to the Railway Act. On the last occasion my friends said the agreement would now be only 21 years under the Railway Act.

Senator BRUNT: There is nothing in the evidence about that, is there?

Mr. J. L. O'BRIEN: Yes. Would you like to have it checked? Perhaps I could bring that to your attention later.

Mr. PATTILLO: It appears on page 15 of the previous proceedings, and reads as follows:

"The operating costs were to be divided in accordance with traffic; and the area of confusion here arises from, I think it is section 156 of the Railway Act, which mentions 21 years in regard to running rights. The Newfoundland legislation, the one referring to the Carol Lake Wabush Agreement, referred to running rights in perpetuity. No running rights agreement has yet been entered into, and this bill provides that the Railway Act shall apply hereafter, so that it may be that so far as Wabush is concerned it may now only be able to obtain a more limited right than it would have been able to obtain before. But so far as obligations are concerned there is no change at all. I think actually that that question of running rights is the only question that we can find that is in any sense material, and if there is any detriment there, and we do not think there is, as a matter of fact, we do not think that the section of the Railway Act does apply in this circumstance, but if there is any detriment it is a detriment which we accept by making this application."

Mr. J. L. O'BRIEN: If I summarized improperly, I apologize, but that arose from the question of how you interpreted the two "notwithstanding", in sections 3 and 4; and my friend said that the 21-year provision under the Railway Act would be a detriment to them because they could not have a lease in perpetuity; and our position is that not only they have a right to a lease, but they have an obligation, and if the Railway Act applies then you cannot have a running rights agreement in excess of 21 years.

Senator BRUNT: In other words, you are saying that if the Railway Act applies this agreement is abrogated, null and void, of no more effect?

Mr. J. L. O'BRIEN: Let me say this, I will leave it to Mr. Hopkins for the strict interpretation of it.

Senator BRUNT: No, let us have your interpretation of it.

Mr. J. L. O'BRIEN: But I am saying that on the interpretation given by my friends, they said that it possibly did apply, and I don't want to be in a position, and my clients do not want to be in a position, where there is a possibility that the agreements they have signed can be abrogated by reason of the terms of the Railway Act.

Senator BRUNT: Do you think they would be abrogated?

Mr. J. L. O'BRIEN: I have had this studied, and had opinions in my own office and from outside, and there is a complete conflict of opinion as to what those two notwithstandings mean. One section says notwithstanding this act all of the provincial acts apply, and the other says notwithstanding section 3 the Railway Act applies. Now, what it means, I do not know, and if you are asking my personal opinion, having seen all of the other opinions, I am in very serious doubt as to the effect, and we do not want to be in a position—and it may not be the present management, for these companies are going to last a long time, and there may be another management or other interests who acquire it—where we would be faced with the possibility that someone can come along and say "the agreements you made are invalid because of the terms of the Railway Act." But there is more than that. They have rights, for instance, under the Arnaud Railway Act to unjust discrimination for Wabush Company. The act provides that they can practise unjust discrimination by giving rights to their own company rather than to anybody else. I do not think I need go further, because you asked me to make a general statement, but I have some of the details I would be pleased to give when the honourable senators have a chance to look into it further.

Senator MACDONALD: I do not know if you would like to answer this question at the present time, but would it not be possible for certain amendments to be made to this bill which would do away with any misunderstanding?

Mr. J. L. O'BRIEN: Well, sir, you will recall perhaps that at the conclusion of the last sittings of this committee a suggestion was made; and I have spoken to Mr. DeRoche, and he has spoken to me, and the understanding I have from Mr. DeRoche is that they feel they don't want to offer any amendments.

Mr. PATTILLO: Oh, now, come, come! Please put this correctly.

Mr. J. L. O'BRIEN: Well, I apologize, but that is definitely what I understood him to say the day before yesterday. Let me state our own position—and perhaps I shouldn't. What I told Mr. DeRoche was that having made a complete study of this we had come to the conclusion that any repairs of the superstructure by amendment could not overcome what we considered to be the basic defect in the foundation. We believe the basis of the bill is bad, without precedent, and we believe there is no reason for it, and I do not want to go into that detail, but I am afraid that there is no agreement.

Senator MACDONALD: Would you mind repeating again the reason you give for saying that it is without precedent?

Mr. J. L. O'BRIEN: Yes, sir, and that will take a few minutes, but I will try to make it as short as possible. We have had the statutes relating to provincial companies which have been declared to be for the general advantage of Canada very carefully checked one by one. Let me say this, first: Up until the year 1919 the Railway Act contained a provision which said that every provincial railway which was intersected or intersected a federal railway was subject to federal jurisdiction; and for that reason, as every provincial railway in some places intersected a federal railway, otherwise there was not much use for it, every one of them was considered to be subject to federal jurisdiction, and whether or not they were declared to work for the general advantage of Canada did not matter, and to an extent those declarations were made automatically.

In any event, if you check through these railways you will see prior to 1912 that in almost every case, although there may be an exception which I have not particularly noted, but in almost every case they were so declared because they were going to be part of the trans-continental railway system. These railways were all leased either to the Canadian Northern, the Grand Trunk, the Grand Trunk Pacific or the Canadian Pacific Railway Company and to some of the American railway companies. That was 48 years ago. There has not been a single declaration that a provincial railway has been for the general advantage of Canada for the last 32 years.

Senator FARRIS: Would that make much difference?

Mr. J. L. O'BRIEN: No, but I wished to point out the cases which have been so declared.

Senator HUGESSEN: Mr. O'Brien, may I interrupt to say that I think I can give you a precedent from my own experience, the case of the Quebec Railway, Light and Power Company. That company was not in any sense a federal company, it was incorporated in the 1880's by the Quebec legislature. It operated a street railway system in the city of Quebec and an interurban or suburban line from Quebec to Montmorency Falls. In 1895 the Parliament of Canada declared that railway to be a work for the general advantage of Canada, and it so remained until a few years ago when it was wound up, a period of 60 years. That seems to me to fall squarely within the ambit of what these people are asking for today.

Mr. J. L. O'BRIEN: That is what I pointed out, that any railway that intersected a federal railway, prior to 1912 was stated to be a railway subject to federal jurisdiction, so the declaration came automatically.

Senator HUGESSEN: It was not an automatic declaration. The railway applied to the Parliament of Canada for the declaration making it subject to federal jurisdiction, just as these people are doing today.

Mr. O'BRIEN: What I am saying, sir, is that whether or not they had that declaration they were subject to federal jurisdiction.

Senator HUGESSEN: If so, why did they make the application?

Mr. O'BRIEN: I will tell you why, Senator Hugessen; and I will come to that in just a moment. The Privy Council in the case of Montreal and the Montreal Street Railway in 1912 found that that the provision of the Railway Act was invalid. Now, up until 1925, and 1927, it was considered necessary that any railway which was going to exchange traffic or become subject in any way to any of the federal railways should be declared to be a work for the general advantage of Canada. In 1925 and 1927, in the Luscar Collieries case, which went to the Privy Council, it was held that they, a provincial railway, had an agreement with a federal railway for the operation of running rights,

then it was automatically subject to federal jurisdiction. So, many of the railways found that they did not need that power, and you will find no application in the last 32 years for such a declaration. But I wanted to point out, that since this decision in 1912 there have been only 8 applications, three of which were in connection with parts of the Canadian Northern system. One application was in connection with a company which was owned 100 per cent by the Grand Trunk and Grand Trunk Pacific, and the application is rather a peculiar one in that it was declared for the general advantage of Canada and concurrently the Minister of Lands was declared to be receiver of that company. What the advantage was, I do not know.

There are two cases of provincial railways which leased concurrently, or immediately afterwards in the time necessary to get approval by the Governor in Council, their whole enterprise to the Canadian Pacific Railway, and the only other case is the case of the Maritime Coal and Railway Company, originally Joggins Railway Company, which had been given federal subsidies from 1892 four times up to 1907, the condition of those subsidies being that the control over the rates should be left to the Governor in Council.

Senator HUGESSEN: Do you claim that the Parliament of Canada has not got the right to make this declaration?

Mr. O'BRIEN: No, senator.

Senator HUGESSEN: So, regardless of precedents, we are completely our own masters as to whether we make this declaration or not?

Mr. O'BRIEN: Yes, but the question is whether the declaration is to be made in the circumstances.

Senator HUGESSEN: All I did was to give you a precedent in which exactly the same sort of thing happened in 1895 as is sought to be done today.

Senator FARRIS: If the power is conceded it seems to be more or less irrelevant.

Senator EULER: Not being a lawyer, and not wanting to rush in where angels fear to tread, and not having quite the same respect for precedents, perhaps, that lawyers have, I would just like to ask this question to clarify the vital issue in my own mind. Is the objection on the ground that as the situation is now there may be perpetual running rights, and if this legislation carries the rights may be restricted to 21 years?

Mr. J. L. O'BRIEN: That is one of them. The basic objection is this: We having been prepared to move on our own, subject to federal jurisdiction, and there was an agreement that we would remain and be subject to provincial jurisdiction. That agreement, we say, is potentially violated right across the board. Here two spurs, industrial spurs if I may call them such, are being asked to be declared something for the general advantage of Canada.

May I say to Senator Hugessen for his information, I have been given a summary of Quebec Railway Light Heat and Power. I said I looked back after 1912. With respect to Quebec Railway Light Heat and Power in 1895, two things were done: it was given federal incorporation instead of a provincial incorporation; it was declared to be for the general advantage of Canada. It was to build and operate steam vessels in navigable waters.

Senator HUGESSEN: Is that an analogy?

Mr. J. L. O'BRIEN: I don't know if it is. The Wabush Lake Railway has not yet invested a cent in railway assets, as far as I know. It has running rights over another railway, but as far as I know it hasn't any equipment. The Arnud Company has not even acquired its full right-of-way. What we have here is two corporate shells who are asking for this power. I am just saying that a company operating in navigable waters, which comes under section 91 of the

B.N.A. Act, and asking for federal incorporation and getting it, I don't know whether that is useful or not. There was a reason in those circumstances for declaring it to be for the general advantage of Canada by reason of the fact that it would have to intersect the federal railway, and was subject to federal jurisdiction at that time.

I have gone into more detail than I had intended to, because of the questions asked. But if there is any implication in anyone's mind that the Quebec North Shore and Labrador Railway, first, is charging high rates; and secondly, has refused to look into the question of any agreement, may I say that implication does not exist.

May I say only one other thing at this time. It has been stated that the province of Newfoundland has been approached, and that it has no objection to this legislation. That statement is perhaps basically correct, but if there is any implication that the province of Newfoundland approves of this legislation, I think such implication would be incorrect. As I understand it, the position of Newfoundland is—and I don't think there has been an official statement, but an informal one by members of the Government—that they have their railway built in Newfoundland, and if the parties can reach a decision by their representations for or against, the province of Newfoundland will not intervene. When Newfoundland says it has no objection, it does not mean that it is either for or against the proposal.

Senator VIEN: Have you a copy of the agreement referred to? You say an agreement was entered into?

Mr. J. L. O'BRIEN: Yes sir.

Senator VIEN: Was it ratified by provincial legislation?

Mr. J. L. O'BRIEN: Yes sir.

Senator VIEN: I do not understand the remarks of Mr. DeRoche at page 15 of the earlier hearing, where he says:

The Newfoundland legislation, the one referring to the Carol Lake-Wabush Agreement, referred to running rights in perpetuity. No running rights agreement has yet been entered into...

Mr. J. L. O'BRIEN: That is actually correct. Let me give my understanding. The Act authorized and confirmed an agreement, the details of which had to be put into subsequent agreements.

Senator VIEN: The basic agreement has been signed and executed?

Mr. J. L. O'BRIEN: The basic agreement is contained in the Act. The next step that occurred was that the parties—

Senator VIEN: To what act do you refer?

Mr. J. L. O'BRIEN: The Carol-Wabush Agreement Act of Newfoundland.

There were several steps following that: the next step was that the parties signed a Letter of Intent. I do not want to go into all the details of that, but in that letter it was again provided that the running rights agreement could not be assigned to a third party, saving that Carol Lake Company could sign it either to Labrador Mining and Exploration or Quebec North Shore and Labrador; but there was no exception in so far as Wabush Lake Railway Company was concerned.

Senator VIEN: Could we have a copy of that agreement?

Mr. J. L. O'BRIEN: I do not have it at the moment.

Mr. HOPKINS: May I ask a question for clarification? The Wabush-Carol Agreement Act recites that the Lieutenant Governor in Council shall authorize, enter into, execute, and deliver an agreement. Section 3 says:

The Agreement authorized to be executed and delivered shall, upon execution and delivery, be binding and final between the parties.

My question is one of fact: was such an agreement ever executed and delivered in accordance with that statute?

Mr. J. L. O'BRIEN: There was first a letter agreement, which I am now speaking about. If it is of sufficient interest, and my friends agree to having it put in, it could be put in. That letter, which was signed last summer says the running rights agreement shall not be assignable to a third party. Then there was a subscription agreement, under which the two parties agreed to subscribe to the stock of Northern Land Company. The detailed running rights agreement has not been signed.

Senator BRUNT: Has this agreement that our Law Clerk has called to your attention been entered into?

Mr. J. L. O'BRIEN: The agreement has been entered into to the extent that a letter of intent has been signed by both parties, but the detailed agreement is not yet signed.

Senator MACDONALD: I understand a copy of that letter will be filed?

Mr. J. L. O'BRIEN: There are two parties to this; it is a separate agreement between two companies. If my friends think the letter of agreement is something that should go in, I would be glad to go over the letter with them and show them the extracts which are here. I would be glad to go over that with Mr. Benson and Mr. Pattillo.

Senator VIEN: My purpose in asking the question is this: if an agreement has been entered into whether it is basic or final, would the result of this legislation be the tearing to pieces of such an agreement willingly entered into between two companies? I would very much hesitate to pass legislation which would have the effect of tearing to pieces an agreement between two companies.

Mr. J. L. O'BRIEN: I would not say that the legislation, by its terms tears to pieces the agreement. I do say, the legislation makes it possible to tear it to pieces.

Senator VIEN: If the agreement is a basic agreement giving perpetual rights, and the effect of this is to limit it to 21 years, I say that it would destroy the basic agreement legislation in itself.

Mr. J. L. O'BRIEN: My friends have just said they have no objection to having this agreement put in. I take it that in the circumstances—perhaps I should ask my clients, if you will pardon me for a minute. I am told that there is not.

Now, this is an agreement dated May 29, 1959 between Pickands Mather and Company of Cleveland and the Iron Ore Company of Canada, and it covers many things including what Northern Land Company is going to do, and the clause I was quoting was:

The running rights agreement shall not be assigned in whole or in part to a third party except that Carol Company may assign all or a portion of its running rights agreement to Labrador Mining or to Quebec North Shore and Labrador.

May I quote the final paragraph of this letter:

This letter, which the parties have jointly prepared, is intended to be a statement of working principles and it is understood that final

commitments by either of us are subject to executing agreements and obtaining such governmental sanctions as each party, in its opinion, requires.

That is the usual letter of intent.

Senator MACDONALD: Is it signed?

Mr. J. L. O'BRIEN: Yes, sir, it is signed by the Pickands Mather Company and by the Iron Ore Company of Canada.

Senator VIEN: Is there any objection to that being incorporated into our record?

Mr. J. L. O'BRIEN: I would think, sir, that whereas we would all be happy to have this available for the members of the committee I might say that we are in a highly competitive business, and I do not think that giving it publicity would result—

Senator VIEN: Yes, I understand.

Mr. J. L. O'BRIEN: But, I will have it available for your view. I just want to say this that the interpretation of that clause has given us some concern. There are certain cases where there is freedom to make assignments within the respective groups. Now, I understand that my friends at one time thought, and they may still think, that this gives them the freedom to assign within their own group. The peculiar part of it is that Labrador Mining and Quebec North Shore are part of our group, and we are given permission to assign, but both parties are refused permission to assign to anyone, and the interpretation of that, as we see it, is that that is completely limiting.

Senator FARRIS: Mr. O'Brien, are you suggesting that the passage of this bill will abrogate that condition?

Mr. J. L. O'BRIEN: I would say, if we are completely subject to the Railway Act—and I am still puzzled as to the meaning of section 153 of the Railway Act under which they can with the permission of the Governor in Council sell and assign, and they have asked for that power in the bill.

Senator HUGESSEN: The fact that they do get the right by this bill to assign their undertaking surely would not affect an agreement they had made with some other party—an agreement to the effect that they would not do that. After all, very many companies hold very wide powers to do this, that and the other thing, but that does not prevent them from making an agreement with others that they will not exercise certain powers. If they break the agreement they are subject to an action in damages.

Mr. J. L. O'BRIEN: Yes, sir, and may I say that if the committee is in agreement with me, when looking at this, that there is a prohibition of assignment, and there is a prohibition of assignment under the Wabush-Carol (Agreement) Act likewise without the consent of both parties, then why is the power being asked for?

Senator HUGESSEN: After all, this is going to be a long-term proposition, is it not?

Mr. J. L. O'BRIEN: Yes.

Senator HUGESSEN: I can well conceive that some years in the future all these parties will get together, and they may want to reorganize the whole structure of these railways, and it may be in the interests of everybody, when that happens, that this company should have the right to assign, otherwise you would all have to come back to the legislature and get the power which you do not have, and which you would not have if section 5 is struck out.

Mr. J. L. O'BRIEN: I would suggest that we will all agree that it is not a very difficult problem to come back to the legislature, and I also suggest

that until we agree—and that is what the act provides for—that nothing can be done, and until we do agree the powers should not be given. Who knows ten years from now whether it is going to be Pickands Mather or someone else in control of the Wabush Company. We chose our bed-fellows, and we say that we want to stay with them and want the opportunity of refusing consent, which was a condition of going into the agreement.

Senator HUGESSEN: What is the position under section 153 of the Railway Act with respect to the sale or assignment of a railway company? Do they have to get the approval—I suppose they have to give public notice, and get the approval of the Board of Transport Commissioners?

Mr. J. L. O'BRIEN: Not only get the approval of the Board of Transport Commissioners, but also, once they have that approval, they have to get the approval of the Governor in Council.

Senator HUGESSEN: Surely, if the Wabush Company a few years hence is seeking to sell or assign its undertaking in contravention of this agreement with your companies they would not have a leg to stand on if your clients went before the Board of Transport Commissioners and said: "Here is an agreement under which these people have agreed not to do what they are seeking to do".

Mr. J. L. O'BRIEN: I do not know, sir. We have an agreement now which is validated by statute which says it cannot be done. I say, sir, with respect, that we should not have to be going before the Board of Transport Commissioners, or before the Governor in Council, or anybody else. We have an agreement which was entered into, as I say, to an extent, unwillingly, because we were ready to build federally ourselves—

Senator MACDONALD: You say it is put into effect by legislation?

Mr. J. L. O'BRIEN: Yes, it is put into effect by legislation, and it is an agreement which says it cannot be changed without the consent of both parties.

Senator MACDONALD: That is provincial legislation.

Mr. J. L. O'BRIEN: Yes.

Senator FARRIS: You are not concerned with the conflict that will arise if the Board of Transport Commissioners or the Governor in Council tampers with a provincial statute.

Mr. J. L. O'BRIEN: I say to my friends: "Why do you consider it necessary to ask for a power which you have by an agreement, which is validated by statute, you say you will not use?"

Senator FARRIS: Where is the language set out asking for it?

Mr. J. L. O'BRIEN: It is in section 5, sir:

"Subject to the provisions of section 153 of the Railway Act, each of the Companies is hereby authorized to enter into an agreement with any other company, whether within the legislative authority of the Parliament of Canada or not, for selling, conveying or leasing to such company the railway and railway undertaking of the Company, in whole or in part, or for purchasing from such company the railway and railway undertaking of such company, in whole or in part, or for amalgamation."

Senator BOUFFARD: It seems to me that I have seen somewhere in the Railway Act a provision that any agreement that has been entered into can be changed by the Board. This clause does not go any further than that.

Mr. J. L. O'BRIEN: No, this clause does not go any further. If we still maintain in effect the provincial agreements which clause 3 purports to do—it says, in effect, that notwithstanding anything in the act the terms of the

provincial statutes remain in effect—if the provincial statutes remain in effect then clause 5 is an exception from the terms of the provincial statutes, and I say one is a contradiction of the other.

Senator BRUNT: You do not seriously think clause 5 hurts your company?

Mr. J. L. O'BRIEN: Seriously, sir, I think it does.

Senator BRUNT: You certainly have no faith in any of our Government bodies if you think it is going to do this harm to you.

Mr. J. L. O'BRIEN: We have one Government body which prohibits this, and another Government body is asked to permit it. I say that having entered into that agreement and having had it validated by statute, that Parliament should not give the authority.

The ACTING CHAIRMAN: I am not quite clear on this point and I wish you would clarify it for me if you will. In the first instance you were willing to accept federal jurisdiction?

Mr. J. L. O'BRIEN: Yes, sir.

The ACTING CHAIRMAN: Since then there has been a provincial act and an agreement.

Mr. J. L. O'BRIEN: Yes, sir.

The ACTING CHAIRMAN: Despite those two, why is it you are no longer willing to accept federal jurisdiction?

Mr. J. L. O'BRIEN: I was asked not to go into detail when Mr. Pattillo raised that. We are subject to federal jurisdiction and will remain subject to federal jurisdiction in so far as the haul over our line is concerned, the 218-mile haul. If we are not offering just and reasonable rates they can go to the Board of Transport Commissioners and complain. My friend says he can go faster as a railway than he can as a shipper. I beg to differ with him. Under the Railway Act you must have traffic to offer, whether a railway or a shipper. The section provides that anyone who has traffic to offer—and in my respectful submission if the Wabush Lake Company went up there tomorrow without any equipment or right of way and said "Five years from now we may have some traffic to offer," I think, as the honourable Senator Vien has said, they would not get a very pleasant reception up there. But let us not get into an interpretation of the Railway Act.

Senator HAIG: They cannot get an application to spend millions of dollars up there before they know where they end up with respect to the cost of handling. That sounds reasonable to me. I don't know.

Mr. J. L. O'BRIEN: In that connection let me point out that when my clients went in there they had to go in and build a railway through territory that was unmapped, through frozen tundra, and they had to raise money to do it. No one was able to tell them what it was going to cost.

Senator BRUNT: It would have been very helpful if they could have been told.

Mr. J. L. O'BRIEN: Anything is helpful.

Senator FARRIS: They would have been glad to get the information if they could.

Mr. J. L. O'BRIEN: It would be equally welcome to my friends if they could tell the people from whom they are seeking financing what their labour costs will be five years from now. The railway rate now is not the one that will be in existence five years from now.

Senator HAIG: They want it under a board which is handling all the rates in Canada. They cannot get a promise as to what the rate will be. That, of course, changes with the times. But they can ask that the board will have the right to grant the rate.

Senator MACDONALD: They get that automatically.

Senator HAIG: They don't, for he is putting a block in there so they can't.

Mr. J. L. O'BRIEN: No. So far as I know, there has never been a case that has come before the Board of Transport Commissioners in which it forced the division of a joint-through rate. In the event somebody says we are putting a block in, let me say two things: First, that the rates which are presently in effect up there from Schefferville to Seven Islands, \$3 a ton for 357 miles, are said to be one of the lowest in any part of eastern Canada for hauling iron ore.

The Hilton Mine near Wyman, Quebec, is 325 miles from Hamilton, Ontario. I am told on good authority that the Hilton Mine is controlled by Pickands Mather Steel Company of Canada. They have a rate freely negotiated with the C.P.R. for 325 miles at \$3.25, and our rate, is \$3 for 375 miles.

I want to make one slight modification in that. As of May 6, last week, by reason of the federal subsidy the rates came down for the next three months by an order of the Board of Transport Commissioners. It is a reduction for three months by reason of the subsidy vote of last year. Therefore, for the next three months the rate paid by the Hilton Mine will be \$3, but the railway will still get \$3.25 by way of subsidy.

So that we have the rate of \$3 for 357 miles and they have a rate of \$3.25 for 325 miles. I just give that as an indication that we are not blocking anything.

Secondly, no one has asked us to negotiate a joint-through rate. These people have come into the territory we have developed with, may I say, their elbows out and they say "We want to be in a position to force you".

Senator HUGESSEN: "To force you"?

Mr. J. L. O'BRIEN: Yes.

Senator HUGESSEN: You mean what they are really asking is to have the right to go to the Board of Transport Commissioners and ask for a reasonable rate over those 220 miles of line?

Mr. J. L. O'BRIEN: No, they can go today.

Senator HUGESSEN: If your rates are as reasonable as all that, I surely do not see any objection in that.

Mr. J. L. O'BRIEN: They can go today over that 218 miles.

Senator BRUNT: But they cannot go for a through rate.

Senator HAIG: Don't they have to be able to tender goods to ship before they go?

Mr. J. L. O'BRIEN: That is true whether they have this legislation or not.

Senator HAIG: It means that all this money is spent in the meantime.

Mr. J. L. O'BRIEN: I do not think so. They can go today for that 218 mile haul just as easily with or without the legislation.

Senator FARRIS: But they have to haul it farther than that.

Mr. J. L. O'BRIEN: They have to take it 40 miles over their line, but they can fix their own rates because it is owned by the company shipping the ore.

Senator FARRIS: All their own products.

Mr. J. L. O'BRIEN: Yes, and they can fix their rates for the 20 mile haul down below.

Senator BOUFFARD: Yes, but they cannot get the through rate.

Mr. J. L. O'BRIEN: Let me revert to the question of the through rate. When I was before the committee the last time I mentioned the joint-through rate and in my ignorance at that time what I stated I applied to everything. There are

certain circumstances where on the division of a joint-through rate the originating carrier, the one who places the product on the line, and the terminating carrier, get a bigger proportion than a pro rata rate. That is what my friends hope to get and are saying is for the general advantage of Canada.

Senator BRUNT: That is hardly a fair statement. Now, let us be fair about it.

Mr. J. L. O'BRIEN: That is the only purpose of this legislation, and it was stated in the record.

Senator BRUNT: I object to the statement about it being for the general advantage of Canada.

Mr. J. L. O'BRIEN: Well, if I went too far I apologize. Let me say that since the last hearing I have been advised by competent traffic experts who enter into these agreements all the time that in the circumstances of a shipment of iron ore, as there will be there, there would not be that division as between the railways with respect to the greater proportion for the originating or terminating carrier. My friends can argue that before the Board of Transport Commissioners, but I say that I know of no case where the Board has enforced it although it has the power to do so.

I just want to say that basically our problem is one of having abandoned something ourselves and then being persuaded to move into another jurisdiction with the consent of the proponents of this legislation.

Senator VIEN: By agreement.

Mr. J. L. O'BRIEN: Yes, by agreement. I say that we should not be asked now to abandon any of the potential rights that are there. Parliament is being asked by Arnaud to violate the Railway Act to give a right of unjust discrimination to that railway. You would not get it in a bill for federal incorporation.

Senator BRUNT: What right have you to abandon this legislation?

Mr. J. L. O'BRIEN: We were abandoning the right. We were persuaded to enter into, to have, a joint enterprise between two specific parties with no right of any governmental body to change it and no right of unilateral change by one of the parties, and here is a unilateral application without our consent which does change in part, and potentially change in other parts, what was a bi-lateral agreement approved by the provincial Government of Newfoundland.

Senator VIEN: Mr. Chairman, I would like to ask Senator Brunt, who is the sponsor of the bill, if there is not a great deal of ambiguity in sections 3, 4 and 5. Section 3 says:

(1) Nothing herein contained shall be construed so as to affect or render inoperative any of the provisions of the Acts of the Legislature of the province of Newfoundland, or of the Act of the Legislature of the province of Quebec, referred to in the preamble; and the Companies shall respectively have and continue to have, exercise and enjoy all the rights, powers and privileges conferred, subject to all the limitations and restrictions imposed upon them, by the said Acts and by the Statutory Agreement referred to in The Wabush-Carol (Agreement) Act, 1959, and by any other Acts of the Legislature of the province of Newfoundland or the Legislature of the province of Quebec heretofore enacted.

(2) Without limiting the generality of the foregoing, Wabush Lake Railway Company Limited may construct, prior to January 1, 1965, and may operate a railway from the mine of Wabush Iron Co., Limited, near Wabush Lake, in Labrador, by the most convenient route to or about the Quebec-Newfoundland boundary, to connect with the railway

of Arnaud Railway Company; and Arnaud Railway Company may construct, prior to January 1, 1965, and 'may operate a railway—' and so on. But then you come to section 4, which says:

"Notwithstanding section 3, each of the Companies and any corporate successor or successors thereof, in respect of their respective tolls and tariffs, and of the operation, construction, improvement, maintenance and control of all railways and railway undertakings which either of them may own or operate in Canada, shall hereafter have all the powers, rights and immunities and be subject to all the obligations provided for in the Railway Act in respect of railways and railway undertakings subject to the legislative authority of the Parliament of Canada."

Therefore, if there is anything in the agreements that have been sanctioned by the legislatures of either Quebec or Newfoundland, yet notwithstanding the reservation made in section 3, the Railway Act will supersede such agreements if they are inconsistent. Then if you come to section 5, it says:

"Subject to the provisions of section 153 of the Railway Act, each of the Companies is hereby authorized to enter into an agreement with any other company, whether within the legislative authority of the Parliament of Canada or not, for selling, conveying or leasing to such company the railway and railway undertaking of the Company, in whole or in part, or for purchasing from such company the railway and railway undertaking of such company, in whole or in part, or for amalgamation."

Therefore, the agreement which is sanctioned again by section 3, paragraph 1, of this bill, is set aside in section 4, because it is superseded by the provisions of the Railway Act, and set aside again in section 5; because if in these agreements there is a provision that they cannot sell, by section 5 of this bill, they can. Therefore, I would like to ask Senator Brunt if he could dispel the ambiguity which I find in reading these three sections.

Senator BRUNT: Well, if the senator thinks that it will be helpful, I am willing to have clause 4 of the bill amended by adding these words:

"Provided that nothing herein contained shall release either of the companies in any way from any of its contractual obligations."

Surely that removes all doubt.

Senator VIEN: No, because you make the Railway Act applicable.

Senator BRUNT: No, we make an exception that the contractual obligations must be observed and carried out. There can be no doubt whatsoever if you insert that.

Senator VIEN: Then I think instead of saying, "Notwithstanding section 3", you should say, "Subject to section 3, paragraph 1."

Senator BRUNT: No. I think this is a proper amendment to make that will protect all the contractual rights which are involved.

Senator FARRIS: Surely a suggestion of that kind could be worked out.

Senator VIEN: It should be. It could be worked out to relieve the ambiguity.

Senator BRUNT: Do you not think this amendment does this?

Senator VIEN: By no means. In my opinion it adds more confusion.

Senator BRUNT: No. Everybody is concerned about these contractual rights. Let us put in a clause to protect them.

Senator VIEN: My opinion is that you should drop section 5, in the first place. If you dropped section 5 you would remain subject to the Railway Act

with respect to all arrangements that the federal railway can make. If you drop section 5 you remain subject to section 3, paragraph 1, which maintains the agreements which have been entered into.

Senator BOUFFARD: Everybody seems to feel that these agreements should not retain the present phraseology.

Senator VIEN: But as Senator Farris has said, if we get around the round table with the idea of protecting the agreements and making all the provisions of this bill subject to the agreement, then we can arrange easily in very short order a draft which will cover the subject.

Senator MACDONALD: What about the arrangement that apparently was entered into that these companies would not apply for a federal charter? As a matter of fact, the parties opposing the bill had prepared, if I understood the evidence correctly, an application to the federal Parliament, which they withdrew. How do we get around that problem?

Mr. PATTILLO: I would like to correct your impression that we made any agreement that we could not have come here for a federal charter. That is quite wrong.

Senator HUGESSEN: I understand that Mr. O'Brien said the reason his clients changed from federal to provincial was that the Government needed a plan—

Senator BRUNT: The arrangement was that this was going to be a federal company.

Mr. J. L. O'BRIEN: Not this company, sir, another one.

Senator BRUNT: It operates in the same territory.

Mr. J. L. O'BRIEN: We were going to have a federal charter for the purpose of crossing the provinces of Newfoundland and Quebec, and Wabush was quite free to put a provincial railway in. Let me say this immediately, and I said it before: We have told the Pickands Company and the Wabush Iron Company that we will place no objection whatsoever in their way if they want to build a railway down to the St. Lawrence and carry their own goods free of everything else. We are not trying to corral traffic, we are not trying to charge high rates. We did enter into an agreement under which we moved out of federal jurisdiction into provincial jurisdiction, and I do not know what the implications of that will be. One of the implications is that once you have federal power and become subject to the Railway Act, you can expropriate running rights on a provincial railway—it is possible for a federal railway to expropriate running rights over a provincial railway. What will be the result of Wabush Railway Company being made a federal railway and running over Northern Land Company's tracks I do not know. Does the Northern Land Company then become subject to federal jurisdiction, because if the railway board has power to act in respect of one of the parties it affects the other. If Northern Land Company comes in, what happens to Carol Lake Company. The implications are so great, that we say we made an agreement with you, you agreed to it, let us live up to it. If these people later find they are having trouble with their rates, let them come here then.

Senator EULER: Would you be satisfied with the amendment proposed by Senator Brunt?

Mr. O'BRIEN: Senator Brunt's amendment on the face of it, as Senator Farris says, seems to do something, and I am not quite adept enough at interpretation to fit it into the three paragraphs. Let me say this, that in so far as the clients I represent are concerned, we believe that the move to obtain federal jurisdiction, which is the basis of this, is in contravention of the spirit of our agreement that we made when we moved into Newfoundland. Now there might be some repairs made to the superstructure of this bill, but nothing can repair the basis of the thing which, in our submission, is wrong.

Senator BRUNT: In other words, you do not want these companies under the jurisdiction of the federal Government.

Mr. O'BRIEN: So long as we have to live with them under our contracts, yes, sir.

Senator BRUNT: So amendments will not help the situation very much.

Mr. O'BRIEN: It might alleviate it. May I say that the words which you used sound to me at first impression that the intention is certainly, I would say, expressed there in so far as the agreements are concerned. Much as I am puzzled as between sections 2 and 4, I would like to see what those words mean when interposed there.

Let me say this, that my learned friends were good enough to suit my personal convenience in having this bill put over, and I may say I do not want to make any suggestion here which will in any way impede the progress of this legislation. I am against it on behalf of my clients but I do not want to make any suggestion to indicate that it should be stood over or studied—that will have to be the decision of the committee.

Senator FARRIS: You put the idea in our heads though.

Mr. O'BRIEN: May I say not with that intention. I would like to defeat the legislation but I would like to defeat it on the basis that this committee is going to decide it.

Senator EULER: Mr. Chairman, would it not be best for these lawyers to get together and evolve something that will be satisfactory?

Senator BRUNT: I doubt it. Mr. O'Brien has stated his position clearly—he is against the bill, he just does not want it to pass.

Senator VIEN: I was just going to ask Mr. O'Brien if a clause could be devised which would provide that nothing in this bill or in the application of the Railway Act which is provided for in the bill, will have the effect of setting aside any of the rights or obligations of the parties under the agreement. Would the bill then be satisfactory?

Mr. O'BRIEN: I am afraid not, Senator Vien, there is nothing in our agreement which says that one party cannot expropriate the other's interests. But the Railway Act gives to one under federal jurisdiction the right to expropriate one under provincial jurisdiction. If such is the case there would be no violation of the terms of the agreement, but potentially there could be a change in the relative positions, which cannot be changed while we remain under federal jurisdiction.

Senator FARRIS: And that has to be approved by the Board of Transport Commissioners.

Mr. O'BRIEN: Yes, it does, in every case. They could expropriate Northern Land Company of which we own half.

Senator HUGESSEN: This whole operation is going to be an integrated railway operation, is it not?

Mr. O'BRIEN: No, sir.

Senator HUGESSEN: Are you not going to start trains from Wabush, run 40 miles along the Northern line, down the Quebec and North Shore 220 miles and then 40 miles to Point Noire?

M. O'BRIEN: No, they are going to deliver cars to our railways and we are going to run the trains.

Senator HUGESSEN: But I am asking you, is not the whole operation to be an integrated railway operation? The train is going to start from Wabush, run 40 miles over Northern line, 220 miles over your line and 40 miles to Point Noire? Will you agree with me that that is so?

Mr. O'BRIEN: It may be so, and it may not. It may be a train which starts from Wabush and may become a part of one of our trains.

Senator HUGESSEN: I agree, but going further, are not other interests involved besides those of these two private organizations who are in conflict before us? Is not the interest of the employees, and of the public involved here? I am asking myself whether it would not be better for this whole railway operation, as regards safety, signals, control of equipment, sidings and level crossings and so on, to be under the control of one regulatory body rather than of three.

Mr. O'BRIEN: May I say this, that the Wabush Lake Railway Company has running rights only, over the Northern Land. Northern Land will not be subject to the Board of Transport Commissioners. All that Wabush Lake Railway will have will be equipment unless the implication is that the next step is that Northern Land will become subject to federal jurisdiction. But the sidings and everything else are not Wabush Lake Railway property, they are Northern Land property.

Senator HUGESSEN: But as regards the operation of trains, safety and that sort of thing?

Mr. O'BRIEN: Frankly, I find it somewhat difficult to define in my mind how the board in its safety regulations is going to distinguish between a federal line running over a right of way which belongs to a company under provincial jurisdiction, and I mention that as a possible implication, that the next step is federal jurisdiction over Northern Land Company, and then moving on to Carol Lake Company, those are implications that concern us seriously.

Senator HUGESSEN: Would it not be better for them to be under one jurisdiction rather than three?

Mr. J. L. O'BRIEN: I would say this, that the Privy Council discussed that matter purely on the question of joint-through rates many years ago, and said no. They said it was quite possible for this to be arranged by a joint provincial and federal board.

Senator FARRIS: That is the Montreal case?

Mr. J. L. O'BRIEN: Yes.

Senator FARRIS: They never proved it, though.

Mr. J. L. O'BRIEN: May I say the Railway Act now provides for a joint federal-provincial board to decide on the question of the joining of provincial and federal railways, that is the junction of the two if they don't agree.

Then, under the Railway Act there is a joint board set up by the province and by the federal authorities to decide whether that is what the Privy Council said could be done in regard to joint-through rates. But Parliament has never enacted such legislation for joint-through rates.

So, I say if this legislation is advisable for this company, the Wabush Lake Company, then it is legislation that should be provided for every provincial company in Canada today, as joint-through rates. If it is for the greater advantage of Canada, it should not apply to only one company that has come along and taken the trouble to apply for it.

Senator FARRIS: There may be a political reason against that.

Mr. J. L. O'BRIEN: There may be. But in reply to the question, would it not be preferable to have one jurisdiction than three, I have replied that the Privy Council discussed that very issue and has said there is no reason that it cannot be done by joint provincial-federal action. That is what has been done in cases of junction of provincial lines with federal lines.

Senator HUGESSEN: We were told a little while ago that there was no body in Newfoundland that has jurisdiction in the matter.

Mr. J. L. O'BRIEN: Newfoundland can provide it. If we came forward with our legislation, Newfoundland could provide that jurisdiction very fast.

Senator LAMBERT: Mr. Chairman, may I simply emphasize an observation made by my friend Senator Hugessen as to the responsibility of this committee as a Senate committee to the public interest generally.

Apart altogether from the cases that may have been advanced by the representatives of each of the contesting companies, I feel that there is a conflict between the clauses 3 and 4, indeed an irreconcilable conflict, which justifies this committee setting up, as has been done before, a subcommittee, to include our legal counsel of the Senate, to meet with the principals to try and if possible eliminate the irreconcilable features of those two clauses, and arrive at some basis on which the federal authority, through the Board of Transport Commissioners, could overcome in some way the obligations on the provincial basis.

I am not a lawyer, but I have listened with interest to the proceedings this morning. Certainly, there is in my mind, at least, an irreconcilable point of conflict. Senator Euler put his finger on it some time ago, and that point should be cleared up.

Senator BOUFFARD: Mr. Chairman, I would like to know if there is anything in the laws of Newfoundland by which the Lieutenant Governor in Council may vary any contract made between two railways, such as we have in the province of Quebec? The same power is given to the Board of Transport Commissioners.

Mr. J. L. O'BRIEN: I will have to plead ignorance. I am afraid I am ignorant of the domestic laws of the province of Newfoundland, and you will have to get a more experienced counsel than I to answer that question. I would doubt it.

Senator BOUFFARD: We have it in Quebec.

Mr. J. L. O'BRIEN: We have had occasion to examine the Newfoundland Railway Act. There was some question in my mind—though I had not expected it would come up—as to whether potentially their Public Utilities Board might not have this jurisdiction. That point has not been examined. But may I say if legislative jurisdiction is required in Newfoundland, the legislature of that province with the support of the government can enact such legislation very promptly.

Senator FARRIS: I would have thought, in view of the character of the agreement, that the first thing you would have looked up would be the powers of the Newfoundland Government.

Mr. J. L. O'BRIEN: May I say, sir, that although I had some part in this, I did not have that peculiar responsibility.

Senator FARRIS: I do not mean you personally.

Senator BRUNT: Mr. Chairman, I have the greatest respect for the opinion of Senator Lambert from Ottawa, but I doubt very much if a subcommittee would be able to draw up amendments that would be satisfactory. I am not critical of either party: we have on the one side Mr. O'Brien and his clients, who are utterly opposed to the passage of this bill—they think it should not pass.

Senator EULER: As it is constituted.

Senator BRUNT: As it is proposed. Let me put it this way: Mr. O'Brien is opposed to these railways being brought under federal jurisdiction. These railways have asked to be brought under federal jurisdiction. No amendment by a subcommittee can get around that situation.

Mr. J. L. O'BRIEN: That is a very fair statement of my position, and I do not want to detract from it by one comma.

Senator BRUNT: An amendment is not going to cure the difficulty, and the subcommittee will not find a solution. I think this committee has to deal with the bill as it is before us: either we pass it or we reject it.

Senator CONNOLLY (*Ottawa West*): Or change it.

Senator BRUNT: We can make the necessary amendments, but I do feel this committee will have to deal with the bill.

Senator MACDONALD: Mr. Chairman, is not the position one whereby the present bill is not acceptable in principle and is not acceptable in detail. I would think the first thing we have to do is make the necessary amendments to the bill, and then decide whether or not we will pass it. We are all agreed, I think, that the bill in its present form is not acceptable and should be changed. Having gone that far, do we then think that the bill as amended should be passed? That is something we will have to decide after the amendments are submitted to the committee.

Senator BRUNT: Do you suggest we start to deal with the bill clause by clause?

Senator MACDONALD: I would agree with the suggestion made by Senator Lambert that certain amendments be presented to this committee. Then, when we have the amendments before us, let us decide on them; and when the bill is amended, then let us decide whether or not we should pass it.

Senator BRUNT: Let the committee amend the bill today?

Senator MACDONALD: I think the amendments are too important to be decided by the committee without very careful consideration of them.

Senator VIEN: I entirely agree with what Senator Macdonald and Senator Lambert have said.

I would move that the committee adjourn to, say, Thursday of next week, and that a subcommittee of those who can help this committee try to draw amendments which will eliminate the principal factors in conflict that have been brought up this morning, so as to make the bill respectful of the agreements that have been entered into. Then, when those amendments are presented to the committee, it will be for the committee to say whether the bill as amended is acceptable or not.

Senator BRUNT: Before we vote on that motion, should not Mr. DeRoche be given an opportunity to reply to what has been said?

The Acting CHAIRMAN: That is a reasonable suggestion.

Senator KINLEY: Before the committee closes, could we not have a diagram showing these railways, where they run and who owns them? We have a blackboard here which could be used for that purpose.

Senator BOUFFARD: I would certainly like to have some kind of an answer to the question I have put to Mr. O'Brien, as to whether the province of Newfoundland has the right to change or vary the terms of the agreement either through its commission or utility board, or through the Lieutenant Governor in Council, because if they have the right to change it the only thing to be decided at the present time is whether the Board of Transport Commissioners is as good a body to make the decision as is the Newfoundland commission. If they have the right to do it then why not give to the Board of Transport Commissioners the same power that the province of Newfoundland may have. They are just as good in deciding a matter of this sort as any Newfoundland commission is likely to be. I have not the answer to that question.

Senator VIEN: I would offer the opinion that the legislature has all of the powers with respect to civil rights except the power to change a man into a woman, and they have even endeavoured to do that.

Mr. J. L. O'BRIEN: I will have that question investigated, Senator Bouffard.

The Acting CHAIRMAN: What is the wish of the committee? Do you desire to hear a rebuttal to Mr. O'Brien's argument?

Senator VIEN: Senator Brunt has suggested that Mr. DeRoche be heard.

The Acting CHAIRMAN: Is that agreeable to the committee?

Some Hon. SENATORS: Agreed.

Mr. W. E. P. DEROCHE, Q.C.: Mr. Chairman and honourable senators, I have prepared a very brief answer to each of Mr. O'Brien's points. Many of them have been dealt with here today in the discussion, but nevertheless these answers are short, and with your permission I think they are worth mentioning in sequence, one at a time.

Mr. O'Brien has made altogether five objections to the bill. In the first place, he has suggested before, and he suggested again today, that the bill is without precedent. If I may speak one sentence on that, I will say we have checked all the records that we could find—we have read *Hansard* on every one of the other bills, and I do not propose to trouble the honourable senators with it—and we have found seven precedents since 1900, none of which were part of a national railway, in none of which was there any general agreement, and in each of which a bill very similar to the bill we are presenting was passed by Parliament.

Senator MACDONALD: Did Mr. O'Brien mention 1912?

Mr. DEROCHE: Yes, and I think he, by oversight, also mentioned one of my precedents, namely, the Maritime Coal, Railway, and Power Company, Limited which happened to be in 1921. The others are all before 1912 and since 1900. I might say in addition to those seven there are another eight in which I could find no indication whatever that they were part of other railways, but I was unable to establish, as I think we can establish in the seven, that they clearly were not.

Senator CONNOLLY (*Ottawa West*): Is it convenient for you to list these seven?

Mr. DEROCHE: Yes. Going backwards in time there is the Maritime Coal, Railway and Power Company, Limited, which was federalized by the Statutes of 1921, Chapter 64. That was in Nova Scotia. The second was Pontiac Central Railway Company of Quebec, federalized by the Statutes of 1908, Chapter 146. The third one was Windsor, Essex and Lakeshore Rapid Railway Company, federalized by the Statutes of 1906, Chapter 184. That was in Ontario, and in that particular case the railway was leased to one of the major railways in 1928, twenty-two years later. The fourth one was Atlantic, Quebec and Western Railway Company, again Quebec, which was federalized by the Statutes of 1903, Chapter 81. The fifth one was Midway and Vernon Railway Company, in British Columbia, which was federalized by the Statutes of 1903, Chapter 154. The sixth one was Nova Scotia and Eastern Railway Company, Nova Scotia, federalized by the Statutes of 1901, Chapter 77. The last one is Orford Mountain Railway Company, federalized in 1901 by Chapter 79. I think, on the records available to us, in every one of those cases it is clear—as I say, there are six others in which I can find no evidence one way or the other, and, as a matter of interest, the question of whether or not it was part of a major system can hardly be of major importance or relevance because of the 21 cases since 1900 only twice was that particular issue mentioned in *Hansard* at all.

The second point Mr. O'Brien made was as to the question of interpretation on which we have heard a great deal this morning, and perhaps I might just speak two sentences on that. I suggest, honourable senators, that part of the confusion that has arisen here arises out of not focusing attention on the two essential words in clauses 3 and 4. The essential word in clause 4 is

"hereafter", and the essential word in clause 3 is "heretofore". Clause 3 says that the rights and obligations under the provincial statutes heretofore enacted shall continue. Clause 4 says:

"Notwithstanding section 3...."

and then it proceeds to say that hereafter the Railway Act shall apply.

I do suggest to the honourable senators that there is no real confusion; that what the statute is saying is that in the usual situation in an attempt to avoid getting into all the detail, that the provincial statutes continue to operate except to the extent that they are hereafter overridden by the Railway Act, and the only overriding that has ever been mentioned here is the one about perpetual rights which I will mention later. So, I would suggest to the honourable senators that the interpretation is not quite as difficult as Mr. O'Brien makes it out.

Senator CONNOLLY (*Ottawa West*): Mr. DeRoche, with respect, there is a problem which arises on the wording of clause 4. Clause 4 does, in effect, override the agreements. Even if the overriding is hereafter, it is still an overriding of the agreements. Is that fair?

Mr. DEROCHE: Yes, Senator Connolly, I would agree with you. I propose to deal with the agreement shortly, also. I would agree that if there was something in the Railway Act which said that some agreement we had entered into before is void then I think, having regard to the way this bill is set up, it would be void, but I will suggest to the honourable senators that there is not anything of that type here.

Senator VIEN: So far as I recall from memory, there is a provision in the Railway Act to the effect that when determining rates, running rights or facilities and other things of that sort, the Board of Transport Commissioners is not bound by any agreement. I have a vague recollection of that, but as I say, I speak from memory.

Mr. DEROCHE: I am not sufficiently familiar with the Railway Act to be sure.

Senator VIEN: I think, from memory, that is right.

Mr. DEROCHE: In any event, there is no agreement at the present time with regard to rates, and, as a matter of fact, there is no agreement at the present time with regard to the detailed operations of the running rights. It is simply a broad statement that we are to have running rights.

Senator VIEN: Except there is a basic principle of the running rights agreement, and it has been agreed to by exchange of letters and by a basic agreement ratified by the legislature of Newfoundland.

Mr. DEROCHE: Yes. If I may, I would like to deal with that point in detail but I would like to do so later.

Senator VIEN: Yes.

Mr. DEROCHE: The other piece of interpretation which I think I must deal with is section 5, which is itself subject to section 153 of the Railway Act. Section 5 has been described here as though it were an authorization by Parliament permitting an assignment. In fact, it is not that at all. Section 153 of the Railway Act, which is in the same words, I may say, as section 5, specifically says that these steps can be taken only if they have been authorized by an Act of Parliament and then, after that authorization, approved by the Governor in Council on the recommendation of the Board of Transport Commissioners.

Section 5, in my submission—and section 5 in nearly all bills of this type for exactly the same reason—is a mere opening of a door. It is getting rid of a condition precedent.

It was said this morning, and I will say it again, it seems to me inconceivable to suggest that the Board of Transport Commissioners would recommend, or that the Governor in Council approve, an assignment in breach of the applicant's obligation.

Why we put the section in and why we would like to have it, though it is certainly not vital here, is that there is an area of assignment. I do not think we entirely agree with Mr. O'Brien's views of how limited the area is; but even on Mr. O'Brien's view there is an area of assignment, namely, the area of consent.

When a situation arises in the future and some reorganization is desired that the Iron Ore Company consents if section 5 is not in this bill then we will at that time have to come back to Parliament in order to open the door to permit us to use section 153. In our view all we are asking in section 5 is to open the door at this time and leave the Board of Transport Commissioners free to deal in the area which we have left free by contract.

I cannot overemphasize how astonishing it seems to me to think we could apply to the board to approve an assignment and not immediately be asked, "Have you obtained the consents you contracted you would obtain?" Our answer then would be yes, if we had. Then the board would say, "Have you got authority to go to Parliament under section 153?" And we would say, "Yes, we have under this bill" and we would proceed. If we have not got this section 5, then in the area where an assignment is permissible, we would have to come back and get section 5 at that time.

Senator VIEN: If the Iron Ore Company of Canada came in 1959 and applied for a federal charter, and then an agreement was entered into as a result of which the applicant withdrew its petition and agreed, under certain terms and conditions, that running rights would be arranged; then the basic lines of a running rights agreement are set out and agreed to, can you come here and say, "I want a federal charter"? In doing so, are you not tearing the agreement to pieces?

Mr. DEROCHE: Yes. I will deal with that in some detail. I would like to emphasize one point. There is no agreement and never was any agreement or any suggestion of agreement by us that we would not federalize. Mr. O'Brien quite properly said he abandoned his federal application at the request of the Newfoundland Government, who requested that there be a joint operation. We are in identically the same position. We were commencing to get ready to build our own railway and we were told by the Newfoundland Government, "No, we just want one railway through here. You people get together and get one railway set up."

Senator VIEN: And you got together and an agreement was entered into.

Mr. DEROCHE: Yes.

Senator VIEN: And it was ratified by the Legislature?

Mr. DEROCHE: Yes, and I will suggest, Senator Vien, that nothing here affects that agreement, and certainly we do not want anything here to affect that agreement.

Senator CONNOLLY (*Ottawa West*): Perhaps this is a little off the track, but why was it necessary to have that agreement ratified by the Legislature of Newfoundland?

Mr. DEROCHE: I am sorry, but like my friend, Mr. O'Brien, I am going to have to plead ignorance.

Mr. BENSON: I can answer that, Mr. Chairman. The reason legislation was sought from the Government of Newfoundland was that in order to have a joint investment in a joint enterprise it was necessary to form the Northern Land Company. This Company was set up merely as a holding company for

the tracks and road bed, and in order to have this done there had to be a special act passed by the Government of Newfoundland to qualify the corporation with those limited powers.

Senator CONNOLLY (*Ottawa West*): To qualify the Northern Land Company?

Mr. BENSON: Yes.

Senator CONNOLLY (*Ottawa West*): So it really did not affect the contractual arrangements?

Mr. BENSON: No. That was the agreed method by which we would each put up 50 per cent of the cost for the joint section. We did that by having the two sponsors of the Northern Land Company advance the funds 50-50 to start the joint track right-of-way.

Mr. HOPKINS: Mr. Chairman, may I ask this question again? I asked it of Mr. O'Brien. Was the agreement referred to in the legislation ever completely executed and delivered?

Mr. DEROCHE: I must admit I was somewhat confused by Mr. O'Brien's answer. If you are referring to the statutory agreement which was a section to the Act, yes it was. But the statutory agreement did not really deal with any of these points we are talking about because it was in the broadest of generalities.

The next point Mr. O'Brien made the last time and which I had noted was the question of a through running rate. He has already himself withdrawn his suggestion that it was in the Act, so I will skip it completely.

The next point Mr. O'Brien raised, and it has been discussed this morning too, was this question of time. He suggested before, as he did this morning, that we should wait until we are ready to ship and then go to the Board of Transport Commissioners and at that time, if we have not been fairly treated by his railway, get as a shipper a rate fixed over the federal railway. The answer to that is so clear I hesitate to repeat it. As it has been said this morning, it is completely unreasonable to suggest we spend \$200 million and get the plant built and then find out what our freight rates are going to be.

Senator MACDONALD: It has been suggested before the committee that you could not get the rate before your line was built.

Mr. DEROCHE: Well, that I think is a disagreement in law between us and Mr. J. L. O'Brien. We are completely satisfied that we can get before the Board now as a federal railway.

Senator MACDONALD: Before you start to produce?

Mr. DEROCHE: Before we produce, before we drill, we are satisfied we can get to the Board and have the application heard now. Mr. O'Brien says we can't, that we will be unquestionably arguing that in another place.

Senator CONNOLLY (*Ottawa West*): Just to clarify a few factual matters: There is no question about the rates on the two spur lines, they are entirely within their own control?

Mr. DEROCHE: Oh, yes.

Senator CONNOLLY (*Ottawa West*): The only problem is over the long haul down the main line?

Mr. DEROCHE: Yes, Senator.

Senator MACDONALD: I understand that these mines will not be producing for a number of years—for five years?

Mr. DEROCHE: Oh, we hope for many more years than five.

Senator MACDONALD: Less than five?

Mr. DEROCHE: More than five.

Senator MACDONALD: Could you get a rate fixed today?

Mr. DEROCHE: I am sorry, what I meant was that we plan that our mine will be in full scale production in five years.

Senator MACDONALD: Are you suggesting that the Railway Board would set a rate today which will be effective five years hence?

Mr. DEROCHE: No. I am suggesting they will fix a rate today, then tomorrow, like any other rate, it would be subject to change, but when we do our planning and when we go to our legislative bureau we can say the rate has been established, which is a normal procedure, and they run the risk, and everybody runs the risk, of a subsequent change in rates. We will have a figure representing today's figure, and that is what we need. On the question of the rates, we have of course employed the best experts we can to advise us what our transportation costs will be, and I am sure the Iron Ore Company has done the same. At the present time our experts seem to be in very sharp disagreement; and on the factual issue, what Mr. O'Brien said this morning now has been done, I must admit surprises me. I have before me here a memorandum of a meeting of February 2, 1959 between the principals of these two groups. I will not read it to you, but it mentions the fact that we are very anxious to establish the rates over their line, as was pointed out, and a figure was mentioned as to the rate they would be prepared to charge, which we thought was at least too high, and every year we have been endeavouring to negotiate this rate, and the reason we finally came here was because we came to the conclusion that too much time was going by and we were not getting any place. As a matter of fact, there never has been any change in the figure mentioned at this meeting.

Senator BOUFFARD: Had you any objection to the rate charged at that time?

Mr. DEROCHE: No, I have no objection. I hesitate again to refer to the memorandum.

Mr. J. L. O'BRIEN: I would be very glad to hear it.

Mr. DEROCHE: I have no objection to referring to it. At the meeting representing Hanna, which is where your management proposes the line, were Mr. Dale Marting and Mr. Harry Stang; and representing our side of the matter were Mr. John Sherman, Mr. Jackson, Mr. Benson and Mr. Williams; and the figure which was mentioned by the Iron Ore Company representatives was \$2.50, and the figure our experts had given us was \$1.25. That is for the Quebec North Shore haul. The mileage is 224 miles, minus 7. The whole length of the Q.N.S.L. to Schefferville is 357 miles. This one is 218 miles. The rate would be \$1.84 on a straight mileage basis for the Schefferville run. My experts say that is not the proper way to approach the problem, however. The \$1.25 rate was established. We have tried to negotiate and we have never succeeded. All we have ever been told is that it will be taken care of in time. We have never succeeded in getting any indication that it would be other than \$2.50. That is their figure. Both of these rates represent only the 218 miles.

Senator MACDONALD: On the through rate did you come to any agreement or have any proposals?

Mr. DeROCHE: Well, we were not discussing through rate at all, because as Senator Connolly pointed out our two pieces of the regular track would be entirely our own, and it was only their piece of the track that we needed to negotiate about. On an approach to the problem of an agreement between the two parties you do not need to get into through rates. If we have to get the matter before the Board of Transport Commissioners then we have to approach it on the other basis.

Senator VIEN: If you compare that rate of \$2.50 for 218 miles with the rates paid in other directions for goods carried over similar mileage, how would they compare?

Senator BRUNT: You came up with a figure of \$1.84, did you not?

Mr. DeROCHE: That is the proportion. Senator, we have had the best experts we could get and they have analysed what we should pay, they have analysed what it would cost us to build our own railway, which is a basic cost we cannot go beyond. I do suggest to honourable senators that it is the silliest suggestion for the good of Canada and of the Canadian public to parallel two railways of 218 miles. There is no question of capacity. The Q.N.S.L. has ample capacity, with relatively minor capital expenditure, to carry anything. The question of railway rates and the comparison of railway rates gets extremely complicated, and all I can say is that we have our experts' opinions as to what we should be paying. They are very much below the figure being suggested. We may be wrong. When we get before the Board they may be right. If so, we want to know it.

Senator MACDONALD: I thought Mr. O'Brien did give a comparative rate in his evidence today.

Senator BRUNT: No, only in relation to the same mileage they are hauling their ore.

Senator VIEN: \$3 a ton for the full mileage over the railway was compared with a rate of \$3.08 a ton over the Canadian Pacific Railway.

Mr. DeROCHE: I understand that the \$3 rate to Schefferville was the basis, but our experts say that is not the way to compare it, but even on that basis the \$2.50 rate, our experts say, does not stand up, and will not stand up, even to the comparison of other rates; but they also tell us that is not the way to do it.

Senator CONNOLLY (*Ottawa West*): I think the committee is in somewhat the same position you are. I do not think we want to infringe upon the problems of the Board of Transport Commissioners.

Mr. DeROCHE: I do emphasize that I only mention the rates, as far as I am concerned, to indicate that we have tried and will continue to try to agree; but at the moment it does not look as though we are going to agree and therefore we are asking for the board to determine it.

Senator CONNOLLY (*Ottawa West*): You say you want to have this rate set up at a very early date and you are not being able to accomplish that?

Mr. DeROCHE: That is it. We need the rate set up this year. An operation of this type, the financing of it, the working out of documentation is a time-consuming process and if we are going to reach our 1965 date, then some time this year is the latest time we can have a figure given that we can put in prospectuses for insurance companies.

Senator MACDONALD: Is there a precedent for the board setting a rate under similar circumstances?

Mr. DeROCHE: I am perfectly willing to bow to Mr. O'Brien's statement on that, that it is not done. The reason it is not done is if you have the right to go to the board to fix it, then the parties will usually agree, and no doubt that will happen here.

Senator VIEN: They do not usually agree. They may agree to do so on a proposition of that size, but the policy of the board has always been and is still never to commit itself as to rates until the railway is built and traffic is ready to move. That is the general rule. It may be that in a matter of this size and in view of everything that is involved, that the board might change its policy and make an exception, but it would be an exception to the rule.

Mr. DEROCHE: Mr. Chairman, the last point, and the important one of course is this question of contractual rates and obligations.

Senator CONNOLLY (*Ottawa West*): I am sorry to be interrupting you, but on the point about rates, if by agreement you could now establish a rate satisfactory to both parties, would you say that you would not need this legislation?

Mr. DEROCHE: That is true. If we now had a long-term agreement which was settled and satisfactory to both parties this legislation would not be necessary.

Senator CONNOLLY (*Ottawa West*): Then that is contemplated in the existing contracts, is it not?

Mr. DEROCHE: It is contemplated, yes. I could show senators memoranda between the parties saying that we will agree on the rate and in default of an agreement we will go to the Board of Transport Commissioners. There are memoranda of meetings between the parties in which that statement appears.

Senator CONNOLLY (*Ottawa West*): The only other question I have is this. The only rates about which you are having a problem now is the rates on the main line. Now, do you say you cannot now go to the Board of Transport Commissioners to have that rate set because you are not offering freight at this time. Is that the position?

Mr. DEROCHE: That is the position and we ourselves checked it with the board and were told flatly by the board that in no circumstances would they hear an application by a shipper until he was ready to ship. I think Mr. O'Brien agrees with us on that. We cannot get there until we are ready to ship.

Senator BOUFFARD: In the discussions that you had with the board about the shipping of iron ore, did you say that you were going to ask for a rate which would be in existence now, if you were operating, or were you going to ask for a rate for future times?

Mr. DEROCHE: Everybody understood that we were talking about a reasonably long contract.

Senator VIEN: And what would that be?

Mr. DEROCHE: I suppose that would again be a matter of negotiation—five years, ten years and it might well contain an escalator clause on expenses and so on but I think everybody understood that we were talking of rates which would have some permanence.

Senator BOUFFARD: Well, I would say that if they go to the board they will find that the board is not going to commit itself to a rate which will exist five years from now because conditions at that time may be changed, and the rates may change five years from now. You cannot expect that the companies will commit themselves for a rate five years from now when they don't know what the conditions will be at that time.

Mr. DEROCHE: Certainly we understand that if we have to have this adjudicated on by the board we will get a less satisfactory answer than would be the case if there was an agreement between the parties.

Senator KINLEY: Does the fact that you will be under federal jurisdiction stop you from making an agreement?

Mr. DEROCHE: No.

Senator KINLEY: They are just sitting there to hear you in case you cannot make an agreement, is that it?

Mr. DEROCHE: Yes.

Senator EULER: What seems interesting to me in all of this is that if you could come to an agreement you would not need this legislation at all. Could you not get together and agree on that?

Mr. DEROCHE: We have been trying to get together since February of 1959.

Senator VIEN: I suggest that if a subcommittee was to be set up and at which all of these interested parties would appear, I think we could bring them to some agreement.

The Acting CHAIRMAN: We have that proposal before us at the moment.

SENATOR EULER: Will Mr. O'Brien explain that point to us?

Mr. O'BRIEN: It is impossible under railway law to make any agreement which cannot be terminated at the end of a year. To start with you cannot, under the Railway Act, make an agreement at all, it is the railway board that approves the rates. There is a possibility under the Transport Act to make an agreed charge agreement, which by the terms of that act are cancellable by any party at the end of the year.

Senator EULER: So these negotiations would amount to nothing anyway.

Mr. DEROCHE: They could not.

Senator CONNOLLY (*Ottawa West*): Any agreement would only be for a year at any rate?

Mr. DEROCHE: My learned friend says so.

Senator CONNOLLY (*Ottawa West*): How long would a rate fixed by the Board of Transport Commissioners prevail?

Mr. DEROCHE: As I understand it, it prevails until it is changed.

Senator BRUNT: That is until an application is made to change it.

Senator VIEN: There is no guarantee that it would prevail for any length of time.

Senator CONNOLLY (*Ottawa West*): It is an open-end, subject to an application to change.

Senator MACDONALD: But if the parties agree and then go before the board, cannot the board make a ruling which should be for all time?

Mr. O'BRIEN: No, Senator Macdonald. They set just and reasonable rates for today and not for tomorrow.

Senator MACDONALD: But I understand that the Board of Transport Commissioners can on application to that board make a ruling which is binding.

Mr. O'BRIEN: No, sir. Just and reasonable rates are rates for today and they fix them for today. If, for instance, a rate was fixed today and as is going on at the moment the non-operating employees seek an increase in wages and labour rates went up, that rate might be changed next week or two weeks from now. But, as I said, under the Transport Act, it is possible for the parties to make an agreed charge agreement which generally relates to all their traffic or a great percentage of it, such as 75 per cent, but that agreement cannot be binding on both parties for more than one year.

Senator CONNOLLY (*Ottawa West*): Suppose for the sake of the agreement that the parties agreed to a five-year term, which was confirmed by the board, and apart altogether from this, does that rate prevail for that whole period unless one of the parties applied for a change?

Mr. J. L. O'BRIEN: They don't have to apply to the Dominion to get approval under agreed charges. An agreed charge under the Transport Act is a private agreement, and is subject only to one condition under the law, namely, if you make a private agreement with a shipper to carry his traffic at a certain rate you must make a similar agreement with any other shipper shipping under similar circumstances and conditions, but he does not have to have the same volume. That agreement is not enforceable beyond one year, if either party objects.

Senator MACDONALD: Could we not put in the agreement a provision to the effect, notwithstanding the provisions . . . ?

Mr. O'BRIEN: No sir. I may say I had the task of sitting through the Royal Commission on Agreed Charges, and through the submission of the legislation to Parliament, and I can say it is very clear by statute that you cannot make one that is binding.

The ACTING CHAIRMAN: Gentlemen, the witness has one more point to make. May we hear it?

Senator CONNOLLY (*Ottawa West*): There are other matters arising out of this question, Mr. Chairman, but let Mr. DeRoche finish.

Mr. DEROCHE: I would like to get this point in, because it is important. This is the question of agreed agreements and reaching them.

The one issue, that Mr. O'Brien has raised, of cutting through an agreement assignment, I have already dealt with that. I suggested that the provisions of section 153 obviously give them complete protection, and there is no problem there.

The other point raised by Mr. O'Brien is the perpetual running rights. On that I said at the opening, and I want to say it again, with reference to the contract itself our running rights over the Northern Land Company are exactly the same as the Carol Company. The two are parallel, and either company can withdraw from the running rights agreement at any time. If it withdraws, it forfeits its expenditure in the half interest in the property.

There is no shadow of doubt that we are bound in every sense that nothing is changed for 21 years. At the end of 21 years the so-called penalty of abandoning the investment may not be a very impressive penalty to anyone. In other words, at any time, and certainly after a few years have gone by, either party is free under the contract to withdraw from the running rights agreement.

If I may, I would like to read the clause in this Letter of Intent which has been filed:

"In case either group fails to operate its railway over the joint section during any calendar year, and fails to pay 20 per cent—"

Each has to pay half the charges or a minimum of 20 per cent.

"—the other group will not insist on the 20 per cent minimum payment, but may declare a forfeiture of the running rights agreement with the defaulting group."

Then it goes into the question that the defaulting group loses the investment and it all passes over to the other side.

My submission, honourable senators, is that under the statutory agreement to which Mr. Hopkins has been referring as to the facts with respect to a joint company. Northern Land Company has to let us have perpetual running rights. In other words, we as one of the companies concerned, have the right to get perpetual running rights, but our obligation can terminate at any time. They are not perpetual, and in my submission there is nothing in the Railway Act which in any sense affects or voids anything that we have done. Even if the section of the Railway Act that deals with 21 years has any application at all, which in our opinion it does not, we will have no difficulty, in our view, satisfying the Board of Transport Commissioners that the joint operation of a joint railway is not a question of perpetual running rights. It is a question of two companies getting together to operate over a common track. And even if I am wrong in that, there is still no obligation of ours that goes to 21 years. If I am wrong in that it may be that we will not be able to pick up any additional rights. But that was our right at all times under the contract.

In my opinion there is no possibility here of relieving us of any contractual obligation. Certainly, there is nothing I could find in the bill which even hints at relieving us of contractual obligations. In order to get into the relieving question, we have had to wander around through the Railway Act and back into the agreement which, I suggest, when looked at makes it perfectly clear that we are not being relieved of anything. Certainly, we don't intend to be relieved of anything, and we feel confident we have not relieved ourselves of anything.

Senator VIEN: That point would have to be ascertained. I am confused in my reading of the Act, and I feel it is not clear that the Board of Transport Commissioners could not set aside these agreements.

Senator EULER: Mr. Chairman, could we get some opinion from our own counsel on that point?

The ACTING CHAIRMAN: Honourable senators, there is before the committee a proposal that a subcommittee be set up to consider amendments to this bill and report back to the whole committee on Thursday next. The names of five senators have been submitted to the Chair. I take it the subcommittee could call these or other witnesses if it likes. Is it the wish of the committee that that is the desirable way of dealing with the amendments? Are you ready for the question? Are you ready to agree to the five names which I will read to you?

Senator HAIG: Read them first.

The ACTING CHAIRMAN: You anticipated me, Senator Haig. The names that have been suggested are Senators Hugessen, Brunt, Euler, Vien and Farris.

Those in favour? I declare the motion carried.

Whereupon the meeting adjourned.

4
Third Session—Twenty-fourth Parliament

1960

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the

Bill S-24, intituled:

An Act respecting Wabush Lake Railway Company Limited
and Arnaud Railway Company.

The Honourable Harold Connolly, (*Halifax North*),
Acting Chairman.

THURSDAY, MAY 19, 1960

No. 3

WITNESSES:

Mr. A. S. Pattillo, Q.C., Counsel for the Wabush Lake Railway Company
and Arnaud Railway Company; Mr. John L. O'Brien, Q.C., Counsel
for the Carol Lake Company.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960



THE STANDING COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable ADRIAN K. HUGESSEN, *Chairman*

The Honourable Senators

| | | |
|-----------------------------------|------------|---------------------------|
| *Aseltine | Gladstone | Molson |
| Baird | Gouin | Monette |
| Beaubien | Grant | Paterson |
| Bishop | Haig | Pearson |
| Blois | Hardy | Power |
| Bouffard | Hayden | Quinn |
| Bradley | Horner | Raymond |
| Brunt | Hugessen | Reid |
| Buchanan | Isnor | Robertson |
| Campbell | Jodoin | Roebuck |
| Connolly (<i>Halifax North</i>) | Kinley | Smith (<i>Queens-</i> |
| Connolly (<i>Ottawa West</i>) | Lambert | <i>Shelburne</i>) |
| Courtemanche | Lefrançois | Smith (<i>Kamloops</i>) |
| Dessureault | *Macdonald | Stambaugh |
| Emerson | McGrand | Veniot |
| Euler | McKeen | Vien |
| Farris | McLean | Woodrow—(50) |
| Gershaw | Méthot | |

50 members

(QUORUM 9)

**Ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, March 17, 1960.

“Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator White, that the Bill S-24, intituled: “An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator White, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, May 19th, 1960.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10:30 A.M.

Present: The Honourable Senators Hugessen, *Chairman*; Aseltine, Beau-bien, Blois, Bradley, Brunt, Buchanan, Connolly (*Halifax North*), Connolly (*Ottawa West*), Dessureault, Gershaw, Gladstone, Haig, Hayden, Horner, Isnor, Kinley, Lambert, Lefrançois, Macdonald, McGrand, McKeen, Monette, Reid, Smith (*Queens-Shelburne*), Smith (*Kamloops*), Stambaugh and Woodrow.—28.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel. The Official Reporters of the Senate.

At the request of the Honourable Senator Hugessen, it was unanimously agreed that the Honourable Senator Connolly (*Halifax North*) continue as acting chairman of the Committee.

The following Bill was further read and considered.

Bill S-24, An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company.

The Honourable Senator Hugessen, Chairman of the Sub-Committee of the Standing Committee on Transport and Communications on the said Bill read a report of the said Sub-Committee and after discussion, it was unanimously agreed that the Bill be amended as follows:—

1. *Page 2, line 4:* Strike out "herein contained" and substitute therefor "in this Act".
2. *Page 2:* After clause 5, add clause 6 as follows: "6. Nothing in this Act shall release either of the Companies from any of its contractual obligations."

The Honourable Senator McKeen, seconded by the Honourable Senator Lambert moved that the said Bill be passed as amended.

After a further discussion it was moved by the Honourable Senator Isnor, seconded by the Honourable Senator Reid that clause 2 of the said Bill be struck out. The question being put on the said motion, it was Resolved in the negative.

The question being put on the Motion of the Honourable Senator McKeen, the Committee divided as follows:—

YEAS—12. NAYS—7.

So it was Resolved in the affirmative.

It was RESOLVED to report the said Bill as amended.

At 11:30 A.M. the Committee concluded its consideration of the said Bill.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

OTTAWA, Thursday, May 19, 1960.

The Standing Committee on Transport and Communications, to which was referred Bill S-24, respecting the Wabush Lake Railway Company Limited and Arnaud Railway Company, met this day at 10.30 a.m.

Senator HAROLD CONNOLLY (*Halifax North*): Acting Chairman.

The ACTING CHAIRMAN: Gentlemen, we have a quorum, so with your consent will proceed. You will recall that in the discussion we had at the last meeting in respect of Bill S-24 your committee set up a subcommittee of five of its members to consider possible amendments. The committee met, and I will ask Senator Hugessen if he will be good enough to submit the report of the subcommittee.

Senator HUGESSEN: Mr. Chairman, the subcommittee consisted of Senators Brunt, Euler, Farris, Vien and myself. We now have the honour to submit to the committee our unanimous report:

Your subcommittee recommends that Bill S-24, an act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company, be amended as follows:

1. Page 2, line 4. Strike out "herein contained" and substitute therefor "in this act".

Perhaps I might explain that it was simply a matter of amending to make it perfectly certain that this proviso in section 3 applies to the whole bill and not simply to section 3 itself. That is merely a paragraph of it and makes it a little clearer.

The second amendment is as follows:

2. Page 2, line 38. Strike out the period and add: "Provided that nothing in this act shall release either of the companies from any of its contractual obligations."

All of which is respectfully submitted.

Perhaps senators would like me to explain in a word why we suggested that amendment. It had been suggested in the discussions in committee that the passage of this bill might conceivably have the effect of releasing the two applicants, the Wabush Lake Railway Company and the Arnaud Railway Company from certain of the obligations they had undertaken under the agreements entered into under the Newfoundland legislation, and this additional wording at the end of clause 4 makes it quite clear that nothing in the act will have that effect or release them, in any event, from that obligation.

Senator HAYDEN: Mr. Chairman, I was wondering why that provision was put in as a proviso rather than as a separate section in the bill.

Senator HUGESSEN: I do not think the subcommittee considered that really mattered much as long as it was the end of the operative sections of the bill, and the wording seemed to us to be broad enough.

Senator HAYDEN: I do not know enough to be able to say section 4 covers all the possibilities. You call it the operative sections of the bill, and it may be; but if you had a separate section it would operate completely, notwithstanding anything that might be in the whole bill.

Senator HUGESSEN: That is what the wording says, "nothing in this act".

Senator BRUNT: Surely it is broad enough to cover the entire act.

Senator HAYDEN: If that is so, why should it not be a separate section rather than a proviso?

Senator REID: What is wrong with making it a separate section?

Senator BRUNT: I do not know that there is anything wrong, except that I think this wholly covers it. There can be no doubt, when this amendment is added, that neither of these companies will be released from their contractual obligations, and that was the concern of everybody at the last meeting of this committee.

Senator HUGESSEN: As far as the subcommittee is concerned, it is a matter of no substance. If the committee thinks it is a matter of draftsmanship, and only a matter of draftsmanship, it is up to the committee to decide if there should be a separate section or not.

Senator ASELTINE: How would the new section read if Senator Hayden's suggestion is accepted?

Senator HUGESSEN: I think it would simply read in exactly the same way, taking out the words "provided that", with the new section starting, "Nothing in this act shall release either of the companies from their contractual obligations".

Senator MACDONALD: Were the representatives of the companies present when the subcommittee met?

Senator HUGESSEN: No, they were not.

Senator MACDONALD: It was my impression that the subcommittee was to get the representatives of the companies together to try to work out some amendment satisfactory to both companies.

Senator HUGESSEN: Oh, no, Senator, that was not the case at all. If you remember, Mr. O'Brien, the counsel for the opponents, said that no amendment would satisfy, that they were against the bill. Our committee was set up to suggest amendments to the bill.

Senator MACDONALD: I recall that he said he opposed the bill, and I understood it was the feeling of the committee that if the committee saw fit to pass the bill there should be some amendments which would improve the bill, and for that reason it was suggested that the subcommittee should be set up, and that the subcommittee should endeavour to get an amendment which would improve the bill to a point which would make it more satisfactory; shall I put it that way?

Senator LAMBERT: Mr. Chairman, as mover of the suggestion at the last meeting to have this committee set up, it was stated then that there seemed to be a conflict between clauses 3 and 4, irreconcilable conflict. Due to the fact that there had been so much discussion in the committee that it could not be expected to do anything and arrive at any conclusion that we should then refer it to the subcommittee to see if some provision could not be made to overcome that obvious conflict between clauses 3 and 4.

Now the amendment that was brought in seems to me to emphasize at least the overcoming of the limitation of the period of 21 years as is provided for in the Railway Act, and if the amendment is adopted either in the form that Senator Hayden suggests or in the form of the report, it seems to me then

the position will be one that resolves the whole case into one of litigation or no litigation, and it will be up to the courts to decide whether or not these contractual relations have been violated.

Senator HUGESSEN: Mr. Chairman, may I read from page 57 of the printed report. It is a question by Senator Brunt, at the bottom of page 57.

“Senator Brunt: Let me put it this way: Mr. O’Brien is opposed to these railways being brought under federal jurisdiction. These railways have asked to be brought under federal jurisdiction. No amendment by a subcommittee can get around that situation.”

“Mr. J. L. O’Brien: That is a very fair statement of my position, and I do not want to detract from it by one comma.”

Senator MACDONALD: Yes, I quite agree with that, but I still feel that as Senator Lambert has stated it was the purpose of this subcommittee to bring in an amendment which would overcome the conflict. That was all the subcommittee was set up to do, and in doing that I was under the impression, either rightly or wrongly, that the views of each railway company were to be considered in respect to that amendment. Now, as I understand it, the subcommittee met and did not hear the representatives of the railway.

Senator BRUNT: That is right. We never thought for one moment that it was necessary for us to call representatives of any of the parties before us. We understood that the committee, that is the whole committee, wanted to leave it to the subcommittee to work out these amendments and that is exactly what we did.

The ACTING CHAIRMAN: I think that is correct, gentlemen. The motion before the meeting contained no instructions to the subcommittee as to whom, if anybody, they should call.

Senator HUGESSEN: Yes, Mr. Chairman, your statement at the end of page 68 bears that out, where you said:

The Acting Chairman: . . . I take it the subcommittee could call these or other witnesses if it likes. Is it the wish of the committee that that is the desirable way of dealing with the amendments?

Senator MACDONALD: So there was certainly a suggestion made that the subcommittee might like to call the representatives of the companies.

Senator HUGESSEN: Might or might not.

Senator MACDONALD: Yes, might or might not, so I am not entirely wrong in that regard. I think we should hear the representatives of the company now as to what they think of these amendments. After all, this is a private bill and I do not think we are accustomed to passing private bills without hearing the views of those who are presenting the bills, and here is an amendment to the bill and we do not know whether or not it meets with the approval or disapproval of the company. Here is an amendment to a bill, and we do not know whether it meets with the approval or disapproval of the company.

Senator BRUNT: I think Mr. O’Brien will be quite honest and will tell you that he is not in favour of the amendment. He just does not want the bill to pass. That is his position. I am not criticizing him for it. Those are his instructions from his clients, to oppose the passing of this bill. The other people sit on the other side of the fence and say: “We want the bill to pass”.

Senator ISNOR: The bill as it is now?

Senator BRUNT: No, as it is amended.

Senator MACDONALD: I think the people on the other side have never said they want the bill passed in the form it will be in with these amendments inserted.

Mr. PATTILLO: We have no objection to the proposed amendments.

Senator LAMBERT: I think all phases of this matter have been discussed very clearly. We know what the situation is, and I suggest that you now have a vote on the amendment.

The ACTING CHAIRMAN: On the other hand, gentlemen, I submit there is nothing obligatory so far as this committee is concerned. We are not obliged to accept the report of the subcommittee, and I say that in all deference. If it is the wish of the committee that we should hear some further representations from the contesting parties—brief representations, and not in the detail in which we have already heard them—then we can do that without any great objection being made. What is your thinking on that matter?

Senator HAYDEN: You might ask the parties, Mr. Chairman, if they have anything to add to what has already been said.

Senator KINLEY: On the other hand, should we not ask the subcommittee to give a better explanation of its reason for this? I would like to get a little information from the subcommittee as to how they arrive at this.

The ACTING CHAIRMAN: Senator Hugessen, Senator Kinley is interested in the reasons why the subcommittee, which you chaired, reached this decision with respect to these two proposed amendments.

Senator HUGESSEN: I do not think you need any further explanation from me about that one minor amendment—the first amendment. That was merely a drafting amendment to line 4 of page 2 of the bill, to substitute the words “in this act” for the words “herein contained”. That is merely a change in drafting. The other amendment was one which we suggested to the end of section 4. I do not think I need to repeat the words of it, but the object of it was to make quite clear that nothing contained in this act should affect or release either of these two railway companies from any obligations which they have previously entered into, either with Mr. O'Brien's clients or with anybody else. The reason why that was put in is that it was urged before us in the committee—I do not know whether you were there—

Senator KINLEY: Yes, I was there.

Senator HUGESSEN: It was said that some of the provisions in this act might conflict with the obligations which these companies had entered into under the Newfoundland legislation or under agreements made between them and the opponents of the bill under the Newfoundland legislation. To avoid any possibility of that interpretation being put upon this bill, if it is passed in its original form, we felt we should insert a new section or subsection—it is immaterial which—to the effect that nothing in the act shall have the effect of releasing any of these companies from their obligations.

Senator KINLEY: I would be interested in what you might call the pioneering rights of the other company. They went in there and pioneered the thing. Is this an invasion at all of their rights?

Senator HUGESSEN: I cannot speak for the subcommittee on that, but I think, speaking for myself, any rights which anybody may have to go upon the existing railway, and the conditions under which they might use that line, are very properly a matter which would be subject to the jurisdiction of an impartial body such as the Board of Transport Commissioners, which will have the jurisdiction if this bill is passed.

Senator HAYDEN: I understood you to say that this proviso was inserted for the purpose of preserving the rights and obligations under the Newfoundland legislation, and also under any contracts that might exist between the parties. Do you think the language of the proviso is broad enough to cover that?

Senator HUGESSEN: No, it is with respect to any contracts that they may have entered into under the Newfoundland legislation.

Senator BRUNT: You see, the Newfoundland legislation has a contract attached to it, and it is part of the act. That is what we are trying to protect—the contractual obligations of these two companies.

Senator HAYDEN: I have not seen that contract because I was not at the last meeting. I do not wish to see it now, but you can tell me whether or not the contract gets its authority from the Newfoundland legislation, or is it independently a binding contract?

Mr. HOPKINS: It is pursuant to the legislation. It forms part of the bill.

Senator HAYDEN: If it gets its authority from the legislation I am wondering whether there should not be some more specific reference to it in the amendment.

Senator HUGESSEN: Is not the reference clear enough in the opening of section 3:

“Nothing herein contained shall be construed so as to affect or render inoperative any of the provisions of the Acts of the Legislature of the Province of Newfoundland...”

That would include the act?

Senator HAYDEN: Yes. I was addressing myself to section 4, where you were putting in the amendment.

Senator HUGESSEN: Frankly, the subcommittee was not satisfied that this amendment was necessary, but as the question was raised we thought we should make it absolutely clear.

Senator BRUNT: It was added for clarification.

Senator HAYDEN: I still feel it should be in a separate section.

Senator HUGESSEN: The subcommittee has no feeling on that point at all.

Senator LAMBERT: It seems to me, Senator Hayden, that the amendment simply emphasizes the provincial status, and the soundness of the contracts and the legislation passed in the province of Newfoundland. I think this committee of the Senate has every right, and indeed is almost in duty bound, to recognize that fact.

Senator McKEEN: Mr. Chairman, if this amendment is proposed for the purpose of clarification, and if Senator Hayden thinks it would be more clear in a separate section rather than as a proviso to a section, I would move that it be made a separate section.

Senator BRUNT: I can give the simple wording for it, if you would like to have it in a separate section.

Senator HAYDEN: All that would be necessary would be to delete the word “provided”, and make it a new clause 6.

Senator CONNOLLY (*Ottawa West*): Is a motion required to accomplish that end?

Senator HAYDEN: I move that there be a new section 6, reading in the language of the proviso, deleting the words “provided that”.

Senator BRUNT: The new section would read:

“Nothing in this act shall release either of the companies from any of its contractual obligations”.

Senator HAYDEN: I so move.

Senator McKEEN: I second the motion.

Senator CONNOLLY (*Ottawa West*): I think we should hear from the parties.

Senator BRUNT: Let us first agree on the wording. This is agreeable to the sponsors of the bill. Does the amendment satisfy Mr. O'Brien?

Mr. O'BRIEN: No, it does not, sir.

Senator HAIG: Mr. Chairman, I thought we appointed a very good subcommittee to look into this matter of amendments. They brought in a unanimous report, and it seems to me that we are bound by the contracts that have been made. I don't see any reason why we should go further into the matter. Let us decide now whether we are going to adopt the report of the subcommittee, and then let us proceed to the consideration of the bill itself. Those who are not in favour of it can vote against it and those in favour of it will vote for it. Quibbling over legal amendments isn't going to produce a satisfactory result in this instance.

I am one of those who is very anxious that someone develop the iron ore resources of this country, and spend the necessary millions of dollars to do so, thus providing employment for our people for years to come. We need such an industry; therefore, if possible I would like to do something to forward this legislation. At the same time, I do not want to interfere with contracts already made by the companies and by the Government of Newfoundland. Certainly I do not want to hurt Newfoundland in any possible way. But I do not think the proposed amendment affects that province at all, nor does it affect the contracts, except to state that they are binding.

I think the subcommittee has done a good job, and we should accept their report, and proceed to consider the bill.

Senator BRUNT: Senator Haig, the feeling of a number of the members of the committee was that it would be better draftsmanship to put the amendment in as a new clause 6. I feel that every member is quite prepared to accept the amendment as clause 6 to the bill.

The ACTING CHAIRMAN: We have a motion before the committee.

Senator MACDONALD: Mr. Chairman, before you put the motion, I believe Mr. O'Brien has something to say.

Mr. O'BRIEN: Mr. Chairman and honourable senators, I do not intend to take much of your time. I must say that I have already trespassed too long, and I thank you for your forbearance. I do not intend to enter into the niceties of legal interpretation in connection with these amendments. It would be presumptuous on my part to do so in the light of the eminent legal minds which have been addressed to it in the subcommittee.

There are two basic points in connection with the amendment which I believe should be brought to your attention. The first is that the contracts, as we have all agreed here, are not yet signed. The basic contract is set out in the legislation and envisages that there should be a lot of other contracts. There has been a letter of intent signed and that was put in the record here last week. Preserving contractual obligations they have not yet contracted is not going to help us much and we respectfully suggest we are being placed in an inferior position by changing the position of one of the parties before the contract is signed. More important than that is the fact that when we were signing and entering into these negotiations at the request of the Government of Newfoundland the contracts—even the contract attached to the bill—were made on the basis that we were dealing with a provincial company and we did not have to put stipulations in the contracts relating to powers which a federal company might have.

I am only going to give one example. We did not put in that contract, for instance, the stipulation that Wabush would never expropriate Northern Land Company which owns the right of way. Wabush has no power to do that but once it is given federal jurisdiction then it can apply and can expropriate. So I wish to suggest that, first, preserving contractual obligations as they exist today does not cover the agreements which we have undertaken to enter into, and which the other parties have. Secondly, I say if they were

all set out in the contracts as between two provincially-regulated companies it would not cover the case where one of the companies is being given powers that were not available to it at the time contracts were signed.

Senator HAYDEN: Mr. O'Brien, supposing this legislation was not before us and you had reached the stage where the negotiations between the parties were where they are now and nothing more was going to happen. Would you regard yourself as being in a position where you could take proceedings to enforce the completion of the contract?

Mr. O'BRIEN: It is set out in the letter of intent that the terms are to be negotiated, so you cannot very well enforce something where you are to negotiate.

Senator HAYDEN: And then you have not got a contract at the present time but you are at some stage of negotiation short of a contract.

Mr. O'BRIEN: We have the basic one which says that there should be a right of way owned by Northern Land Company and there are to be running rights in perpetuity with Wabush Lake Railway Company and with the Carol Lake Company. That is a very short contract that is attached to the statute, and it envisages that there will be a contract in detail signed as to the matter of carrying this out.

Senator HAYDEN: But if the basic one says the right of way is to be owned by the Northern Land Company, which we are not preserving, does it mean they could not exercise their power of expropriation?

Mr. O'BRIEN: No, not in my respectful submission. The fact that the basic contract in the Newfoundland Statute says that the Northern Land Company is to buy a right of way and build a line there does not by its terms preclude another railway with federal power from coming in and expropriating, and a federal railway has that power. There is nothing in the contracts and the statutes which preclude that. I may say that the Northern Land Company is owned 50 per cent by my clients and 50 per cent by the applicants.

Senator BRUNT: Your client is a federal company?

Mr. O'BRIEN: Yes, sir.

Senator BRUNT: Then you can expropriate the Northern Land Company?

Mr. O'BRIEN: Yes, sir; and we were a federal company when we signed the contract.

Senator BRUNT: You have the right of expropriation now.

Mr. O'BRIEN: Yes, sir.

Senator BRUNT: And you object to these people having an equal right?

Mr. O'BRIEN: That is not the basis of my objection.

Senator BRUNT: Isn't that a factual statement, that you object to these people having an equal right with your company now?

Mr. O'BRIEN: I would say that I object in this case to an industrial spur line having a right to expropriate a larger railway, yes.

Senator HAYDEN: You don't want the tail to wag the dog?

Mr. O'BRIEN: No.

Senator KINLEY: From a layman's point of view is it not a fact that the activities of the other company will give you a customer for your railroad which will be advantageous?

Mr. O'BRIEN: Yes, sir, with this qualification: it was stated the other day that the railroad had adequate capacity to handle whatever was required. We are not satisfied that that statement is exactly true. It is a matter of appreciation. I asked this morning offhand what would be required to raise the capacity of this railway and they indicated expenditures perhaps in the area of \$5 million to \$8 million. But I make that qualification.

Senator KINLEY: If the traffic demands it, it looks right, does it not?

Mr. O'BRIEN: Oh, yes.

Senator KINLEY: And you do not think the Transportation Commission would make you carry it at a loss?

Mr. O'BRIEN: No, sir; and may I say that the Transportation Commission has jurisdiction right at this moment to fix the rates we charge.

Senator HAYDEN: Do I understand that this amendment we are proposing is being opposed?

Mr. O'BRIEN: No, sir; I would hesitate to say that. I think the amendment to the extent that it was possible to amend it in that way tries to do what this committee thought should be done. I am not questioning that.

Senator HAYDEN: Short of rejecting the bill is there any additional language you would suggest?

Mr. O'BRIEN: No, sir.

Senator LAMBERT: May I ask, Mr. O'Brien, if these contingencies you have indicated, apart from the provisions of the basic agreement, would be subject to confirmation or rejection by the Board of Transport Commission before any of them materialized—I mean, any of them?

Mr. O'BRIEN: Well, that is the most important one, and raises a very big question as to what the effect of this amendment is. Ordinarily, a running rights agreement must be approved by the Board of Transport Commissioners and cannot be for more than a period of 21 years. This contract is in perpetuity, whether that takes it out of their jurisdiction, I am not ready to express an opinion.

Senator LAMBERT: Well, that is exactly the point that the amendments sought to overcome.

Mr. O'BRIEN: To the extent that it was possible to amend, I think the honourable senators and the subcommittee have done what I think is a very good job.

Senator LAMBERT: If it passes both houses, it becomes the law of the country, and the Commission have no alternative.

Mr. O'BRIEN: If they have any jurisdiction under the terms of the act they would have no alternative.

Senator LAMBERT: Well, I think that is a very interesting point.

Senator McKEEN: Can they expropriate without the permission of the Transport Commission?

Mr. O'BRIEN: No, sir.

Senator MACDONALD: Did I understand you to say that there will be certain contracts entered into between the companies which are envisaged in the provincial legislation which will not be bound by the amendment?

Mr. O'BRIEN: That is as I interpret the amendment—its contractual obligations as of today. I doubt that if we entered into a contract next year, or five or ten years from now, it could be said that a provision of the bill if it were enacted would govern that contract.

Senator MACDONALD: Even if that contract is envisaged or suggested in the agreement referred to in the legislation?

Mr. O'BRIEN: I had not addressed my mind to that question, sir. But there are two aspects. The contract has to be negotiated, and, first, we are not in the same position as we would have been to negotiate; and, secondly, on the wording as I understand the amendment as now given, I doubt that it would apply to contracts entered into presently existing. There may be other opinions on that question.

Senator KINLEY: Is there any question of competition in the sale of the product?

Mr. O'BRIEN: Competition of the sale of iron ore?

Senator KINLEY: In the selling of low grade ore, or of other grades. You own the railroad. The surrendering of that to dual authorities, as it were, does that affect your market?

Mr. O'BRIEN: Let me say this, that there is a high grade ore deposit up at Schefferville now being developed. My clients are now developing a low grade ore a few miles away, and there is no doubt about the fact, to the extent there is not a sufficient world demand, that the two will be in competition; but let me say immediately that there has been no effort to prevent the proponents of this bill developing and marketing. There is an agreement under which we have built a railroad with them. We have done so. We are at the present time carrying out the product of their pilot plant and bringing it up to the Great Lakes, because they have no means of doing it themselves. There has been no impediment put in the way of the proponents of this bill at all. Our sole objection to this is that we feel that the agreements were entered into on the basis there were two provincial companies, which cannot in spirit be carried out, if one becomes a federal company.

The ACTING CHAIRMAN: Any further questions, gentlemen?

Mr. O'BRIEN: Thank you very much.

The ACTING CHAIRMAN: Mr. Pattillo, have you or your associates any comment you desire to make?

Mr. PATILLO: We think not, Mr. Chairman. We have said everything we wish to say.

The ACTING CHAIRMAN: Thank you. Senator Hugessen, do I understand that your committee is prepared to give way to the motion prepared by Senators Hayden and McKeen?

Senator HUGESSEN: Oh, certainly. There is no question about giving way. It was just a suggestion made, and the committee has power to change the situation if it wants to. I think it is a good suggestion.

The ACTING CHAIRMAN: The motion before the meeting is that an additional clause, to be known as clause 6, be added to this bill, and that it read as follows:

Nothing in this act shall release either of the companies from any of its contractual obligations.

Are you ready for the question?

Senator MACDONALD: Before the vote is taken, I will vote for the amendment, but I still reserve the right if I deem it advisable to vote against the bill as amended.

Some SENATORS: Agreed.

The ACTING CHAIRMAN: Are you ready for the question?

Senator HAYDEN: Just a moment. There was another amendment that the subcommittee suggested, changing those words in section 3.

The ACTING CHAIRMAN: There are two amendments to be dealt with.

Senator MACDONALD: Are we voting on the amendment?

Senator ISNOR: No. We are dealing with the report as presented by the subcommittee as amended, and then we come to the bill later and take it section by section.

The ACTING CHAIRMAN: All in favour of the amended report of the committee? Contrary? I declare the amendment of the committee carried.

Do you wish to go over the bill clause by clause?

Senator MACDONALD: I do not think we need to go over the bill clause by clause. As far as the form is concerned, I do not think there is any objection to it.

Senator MCKEEN: I move the adoption of the bill as amended.

Senator LAMBERT: I second.

The ACTING CHAIRMAN: All in favour?

Senator MACDONALD: Before the vote is taken, I wish to say that I think the committee must be as confused as I am with respect to this bill. Apparently the opposing company, represented by Mr. O'Brien, was prepared to make an application to Parliament for incorporation of one of the railways he represents, but that application was withdrawn, and an agreement was entered into between the applicant companies and Mr. O'Brien's company to seek incorporation under the provincial legislature of Newfoundland. That bill was passed, and the agreement under which these two companies came together is incorporated in the Newfoundland legislation. Now, Mr. O'Brien says that the applicant companies by reason of a breach of the spirit of that arrangement has come and asked for federal jurisdiction of this railway. I must say it is all very confusing to me. I was as anxious as anybody else that this mineral development should be proceeded with as speedily as possible, and I am convinced that the passing of this bill or the rejection of it will not affect that development in any way whatsoever. The applicant company says it wants to get a rate established for the transportation of its ore.

Well, the development won't be completed for probably five or ten years and whatever freight rate is established now, if one can be established now, will certainly not be binding upon the board in five or ten years.

So I am in a very difficult position. I do not want to hold up the applicant company and yet I want to be fair to the opposing interests. I was hoping that these two organizations could get together. They got together a number of years ago and had a bill passed by the Newfoundland legislature which was satisfactory to both. Now they are here and there is disagreement. I would think that it might still be possible for them to get together. I frankly admit I am not clear in my own mind that this bill should pass and yet I hesitate to throw it out. Certainly I cannot see my way for supporting it. If anything could be achieved I would certainly be willing to adjourn the sittings of this committee for another two weeks.

Senator BRUNT: No.

Senator MACDONALD: It will not hold up the progress of the bill in the other place. As honourable senators know, this is a private bill and there are a great many divorce bills ahead of it and when it will be reached in the other place I do not know. Why not hold it up for two weeks here to see if these people cannot get together—they are going to be in business for many years and they would not want to be in business having animosity, the one toward the other. Why don't they try to get together? They have put this committee in this position and I do not think any one of us here can be definitely satisfied in their own minds which way to vote on this bill.

Senator ISNOR: Mr. Chairman, the committee is dealing with the bill as a whole, and not section by section, but I am going to raise the same point as I did on a previous occasion, namely on section 2 of the bill. I pointed out at the last meeting, as those who were present will remember, as to the advantage of having section 2 in the bill. I contended as I do today that it is unnecessary because these works are only serving, at the most, three provinces, and it is not for the benefit of the whole of Canada as it reads. I am going to ask the Chairman of the Subcommittee whether they entertained

any thought of striking out section 2 particularly dealing with the words, "works for the general advantage of Canada". I think I made my stand clear at the previous meeting, and I do not wish to take up too much time in developing the thought further. I think it is very clear, as Mr. Pattillo stated, that it is largely because of operations on the St. Lawrence River shipping ports that that provision is included in this bill and I feel in fairness to the great ports of Halifax and Saint John that it should be struck out.

Senator HUGESSEN: Mr. Chairman, the subcommittee did not specifically consider striking out section 2, but I do point out that the whole point of the bill resides in section 2 because in virtue of section 29 of the British North America Act, a work which is situated wholly within one province—and each of these railways is situated in one province, the one in Quebec and the other in Newfoundland—shall be subject to provincial jurisdiction unless the Parliament of Canada declares them to be works for the general advantage of Canada.

Senator ISNOR: That is the very point I am making, that it is not for the general advantage of Canada.

Senator HUGESSEN: The only way to bring these railways, local as they may be, within the jurisdiction of the Board of Transport Commissioners, is to use this exact language of the British North America Act. It may be an exaggeration, but it is the only way legally they can accomplish the object to bring these railways out of provincial jurisdiction into the jurisdiction of the Parliament of Canada where they will be subject to the control of the Board of Transport Commissioners. The subcommittee felt, I think, that here is to be an important railway operation starting at these mines and going down to seaboard a distance of over 300 miles, and we felt for it to be a proper railway operation which is going to last for many years it should be under the control of the Board of Transport Commissioners rather than under the control of three separate bodies.

Senator ISNOR: It would still be under the control of the Board of Transport Commissioners without that provision.

Senator BRUNT: No. The whole bill would go out without that clause.

Senator REID: Mr. Chairman, I would suggest that the bill be delayed until it is given further thought. It is very awkward for one to find all the angles to this bill.

Senator BRUNT: Mr. Chairman, I suggest we vote on the bill.

The ACTING CHAIRMAN: Gentlemen, before we take the vote is there any further support of the views of Senators Macdonald and Reid.

Senator HAIG: Let us take the vote.

Senator MACDONALD: What about the question raised by Senator Isnor, Mr. Chairman?

Senator BRUNT: Does Senator Isnor want to move that the clause be struck out?

Senator LAMBERT: I think the principle here is, is it the wish of the committee that this bill pass or not pass, it is a question of whether the committee wants to pass this bill or not, and I would suggest that the vote be taken.

Senator MACDONALD: It is also a question whether they feel that they are well enough informed.

Senator BRUNT: Each member will make up his own mind on that when he votes.

Senator MACDONALD: If we vote on the bill now and carry the bill or turn it down, it is finished. Some members, Senator Reid and myself, do not feel we are well enough informed to vote for or against the bill, and Senator Isnor raised this other question on clause 2, which concerns me a great deal also.

Clause 2 says that the railway workings and undertakings are declared to be works for the general advantage of Canada, but as Senator Isnor points out these are works carried on within one province.

Senator BRUNT: Three provinces.

Senator MACDONALD: Two.

The ACTING CHAIRMAN: Senator Isnor, do you care to submit a resolution dealing with clause 2?

Senator ISNOR: I have not thought, but at the suggestion of Senator Brunt I will move and I feel that he will after having suggested it, that he will second my resolution.

Senator BRUNT: No, no. I suggest you make it. What an unfair assumption to make.

Senator ISNOR: I do not want to take any privilege away from you concerning the Maritimes. I will move, Mr. Chairman, that section 2 of the bill be struck out.

The ACTING CHAIRMAN: Is there a seconder?

Senator MACDONALD: A seconder is not necessary.

Senator KINLEY: This idea of it being a project for the benefit of the whole of Canada, does it affect the situation whether it is located within one province only? The fact that the works is located in one province does not affect it at all, does it?

Senator BRUNT: Question.

The ACTING CHAIRMAN: As a very naive individual I am wondering if this is the beginning of a filibuster in this committee.

You have heard the motion submitted by Senator Isnor. What is your wish?

Senator MACDONALD: Before the question is put, Mr. Chairman, may I say that we have not heard the views of the province of Newfoundland with respect to this bill. We do not know whether the province looks with favour upon the passage of the bill or not. Senate committees in the past, where deemed necessary, have obtained the approval of the provinces concerned with particular bills. I am wondering if we should get the views of the province of Newfoundland.

Senator BRUNT: I wonder if we can vote on the amendment and deal with it. I think we should deal with the amendments as they come up.

Senator CONNOLLY (*Ottawa West*): It seems to me, Mr. Chairman, from the type of discussion that is going on, that we should deal, first of all, with this amendment. I think the sensible way of doing it is to take the bill clause by clause, and then we can decide on the type of preamble.

The Acting CHAIRMAN: We still have before us a motion with respect to the amended report of the subcommittee.

Senator HAIG: No, that is passed.

Senator BRUNT: We have a motion now to adopt the bill, and there is an amendment by Senator Isnor that clause 2 should be struck out. Should we not deal with that?

The ACTING CHAIRMAN: Senator Connolly proposes, on the other hand, that we should deal with the bill clause by clause.

Senator LAMBERT: No, that comes later.

The ACTING CHAIRMAN: I want merely to get a clarification. We appear to be at odds in our thinking.

Senator BRUNT: Let us deal with Senator Isnor's amendment.

The ACTING CHAIRMAN: Let me clarify this for myself. We are going to deal with clause 2, but we propose to pass the bill in a holus-bolus fashion once we have disposed of clause 2.

Senator HAIG: There has now been an amendment to clause 2. In deference to the honourable senator from Halifax-Dartmouth (Hon. Mr. Isnor) we should vote on his motion.

The ACTING CHAIRMAN: Are you ready to pass judgment on the motion of Senator Isnor that clause 2 be stricken from the bill?

—On a show of hands, the Acting Chairman declared the motion defeated.

The ACTING CHAIRMAN: The motion now is that the bill be passed as amended. Are you ready for that motion?

—On a show of hands the Acting Chairman declared the motion carried.

The ACTING CHAIRMAN: Now, is it your wish to proceed with this bill clause by clause?

Some hon. SENATORS: No, no.

The ACTING CHAIRMAN: Gentlemen, shall I report the bill to the Senate as amended?

Some hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Is there any further business in connection with this bill?

Senator BRUNT: No.

5
Third Session—Twenty-fourth Parliament

1960

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the

Bill S-26, intituled:

An Act to amend the National Energy Board Act.

The Honourable Harold Connolly, (*Halifax North*),
Acting Chairman.

TUESDAY, MARCH 29, 1960



WITNESSES:

Mr. E. A. Driedger, Assistant Deputy Minister of Justice;
Mr. Ian N. McKinnon, Chairman of the National Energy Board.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

THE STANDING COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable ADRIAN K. HUGESSEN, *Chairman*

The Honourable Senators

| | | |
|-----------------------------------|------------|---------------------------|
| *Aseltine | Gladstone | Molson |
| Baird | Gouin | Monette |
| Beaubien | Grant | Paterson |
| Bishop | Haig | Pearson |
| Blois | Hardy | Power |
| Bouffard | Hayden | Quinn |
| Bradley | Horner | Raymond |
| Brunt | Hugessen | Reid |
| Buchanan | Isnor | Robertson |
| Campbell | Jodoin | Roebuck |
| Connolly (<i>Halifax North</i>) | Kinley | Smith (<i>Queens-</i> |
| Connolly (<i>Ottawa West</i>) | Lambert | <i>Shelburne</i>) |
| Courtemanche | Lefrançois | Smith (<i>Kamloops</i>) |
| Dessureault | *Macdonald | Stambaugh |
| Emerson | McGrand | Veniot |
| Euler | McKeen | Vien |
| Farris | McLean | Woodrow—(50) |
| Gershaw | Méthot | |

50 members
(QUORUM 9)

**Ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, March 24th, 1960.

"The Honourable Senator Aseltine presented to the Senate a Bill S-26, intituled: "An Act to amend the National Energy Board Act".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Brunt moved, seconded by the Honourable Senator Aseltine, that the Bill be now read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Aseltine, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, March 29, 1960.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 3.00 p.m.

Present: The Honourable Senators: Aseltine, Beaubien, Blois, Bradley, Brunt, Connolly (*Halifax North*), Gladstone, Haig, Horner, Lambert, Macdonald, Reid, Robertson, Smith (*Queens-Shelburne*) and Veniot—15.

In attendance: The official reporters of the Senate.

In the absence of the Chairman and on Motion of the Honourable Senator Brunt, the Honourable Senator Connolly (*Halifax North*) was elected Acting Chairman.

Bill S-26, An Act to amend the National Energy Board Act was read and considered.

On Motion of the Honourable Senator Haig, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

Heard in explanation of the Bill: Mr. E. A. Driedger, Assistant Deputy Minister of Justice and Mr. Ian N. McKinnon, Chairman of the National Energy Board.

On Motion of the Honourable Senator Aseltine it was Resolved that the Clerk of the Committee send a copy of the Bill to the Attorneys General of each province with a letter notifying them that the Bill has been considered in committee and approved and that it will be coming up in the House of Commons.

It was Resolved by the Committee to report the Bill without any amendment.

At 4.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

TUESDAY, March 29, 1960.

The Standing Committee on Transport and Communications to whom was referred the Bill (S-26), intituled: "An Act to amend the National Energy Board Act", have in obedience to the order of reference of March 24th, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

HAROLD CONNOLLY,
Acting Chairman.

THE SENATE
STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

OTTAWA, Tuesday, March 29, 1960.

The Standing Committee on Transport and Communications, to which was referred Bill S-26, to amend the National Energy Board Act, met this day at 3 p.m.

Senator HAROLD CONNOLLY (*Acting Chairman*) in the Chair.

The ACTING CHAIRMAN: Gentlemen, we have before us Bill S-26, an act to amend the National Energy Board Act. I have been handed a memorandum from our Law Clerk and Parliamentary Counsel which, with your consent, I shall read:

On Thursday last there was a discussion in the Senate as to the constitutionality of clause 1 of the present bill.

I do not usually prepare memoranda on public bills, but since I will be unable to attend the committee meeting today I feel that I should express, for what it is worth, my opinion on the question.

I believe that clause 1 is within the legislative competence of the Parliament of Canada. It is clear that Parliament is competent to confer on the National Energy Board jurisdiction over the activities of extra-provincial pipe line companies. It follows that it could enact clause 1, which is concerned exclusively with the transmission of gas, albeit within a province, but only where the gas so transmitted is the property of an extra-provincial company and the transmission concerned is through its own pipe line.

I am encouraged in this view by the long line of railway cases which establish that the Parliament of Canada, and through it the Board of Transport Commissioners, has jurisdiction over the activities of branch lines, terminals, etc., which are situate entirely within a single province, but which are operated by and connected with a transcontinental railway. These have been held to be works and undertakings 'connecting the Province with any other or others of the Provinces, or extending beyond the limits of a Province' and not 'local works and undertakings within a Province', within the meaning of head 10 of section 92 of the British North America Act. May I cite, in particular, the judgment of Lord Reid in the Privy Council case of *C.P.R. v. A.-G. B.C.* (1950) A.C. 122, and the judgment of Chief Justice Rinfret in the 'Beauport Case' (1945) S.C.R. 16.

We have a group of gentlemen appearing before us today, namely, Mr. Ian N. McKinnon, Chairman of the National Energy Board; Dr. Robert D. Howland, Vice-Chairman of the National Energy Board; H. Lee Briggs, member, National Energy Board; and Mr. E. D. Driedger, of the Department of Justice.

Is it your wish to hear these gentlemen now?

Senator BRUNT: I think we should start with Mr. Driedger, on the constitutional point that has been raised. We know he is a busy man, and perhaps we could hear him and let him get away.

Senator MACDONALD: I may say Mr. Hopkins is a little too modest when he says that he is unable to attend the meeting, but is expressing his opinion for what it is worth. I for one think it is worth a great deal.

Senator BRUNT: I am willing to accept it as being correct.

Senator MACDONALD: Notwithstanding that, I think we should hear Mr. Driedger.

The ACTING CHAIRMAN: Modesty is a commodity quite common in legislative circles.

Senator MACDONALD: Not with lawyers.

Mr. E. A. Driedger, Assistant Deputy Minister, Department of Justice: Honourable senators, in view of the opinion that has just been read, perhaps the appropriate thing for me to do is to refer you to another decision of the Judicial Committee of the Privy Council, a more recent one, and one which I think is perhaps closer to the facts in the present case.

Senator MACDONALD: I wonder if we could first of all get the issue clear. I take it that this bill, if it is passed, will give the National Energy Board control over the transportation of gas not only from one province to another, but also within a province. Is that correct?

Mr. DRIEDGER: Yes, that is correct.

Senator BRUNT: Only as it relates to an extraprovincial pipe line.

Senator REID: But if it affects one province entirely, it may be an important issue and we should give it consideration. If, for instance, a pipe line starts in the upper part of British Columbia and comes down into Vancouver, I want to find out if the Board has control over it.

Senator BRUNT: The Board has nothing to do with such a pipe line.

Senator REID: I would not think it had.

Senator BRUNT: The definition of "pipe line" is set out in the National Energy Board Act, and refers to pipe lines that are extraprovincial, going from one province to another. There is a pipe line which runs from the town of Mildred to the city of Saskatoon, over which the National Energy Board has no jurisdiction whatsoever—that is purely a provincial matter.

Senator MACDONALD: It is a provincial pipe line, because the company that transports the gas does not send gas out of the province.

Senator BRUNT: It is a provincial pipe line because it originates and ends in the province, and never leaves the province.

Senator HORNER: But should that by any chance be connected with a line that goes on to, say, Ottawa, then it would come under this?

Senator BRUNT: No, because it ends at Saskatoon.

Senator ASELTINE: They would have to get legislation.

Senator WALL: I wonder about the concept of the definition of the word "pipeline". I had never thought of that before, but I have taken the trouble to look up the Revised Statutes of Saskatchewan (1953), and to look at the powers of public utilities companies. Under Section 39 of the public utilities companies Act powers are given to the local Government Board to set wellhead prices, and then under the heading of "Regulations" in Section 41 the Lieutenant-Governor-in-Council may make regulations fixing the rates for carriage through any pipe line. That particular reference bothered me. I have also looked at the Revised Statutes of Manitoba, Chapter 175 which is concerned with the powers of the Municipal and Public Utility Board. In the definition section it discusses the interpretation of the act, and it says:

"public utility" means any system, works, plant, equipment, or service for the transmission of telegraph or telephone messages or for

the conveyance of persons or goods over a railway, street railway, or tramway, or by motor-bus, or for the production, transmission, delivery, or furnishing, of water, gas, heat, light, or power, either directly or indirectly to or for the public, and includes all such carried on by or for the owner or a municipality or the Government of Manitoba.

It appears to me from the interpretation that the powers of the Municipal or Public Utility Board that there is in effect an apparent—I do not want to make any statement on that—an apparent trespassing over the jurisdiction of the Public Utility Board of Manitoba, and of Saskatchewan.

Mr. DRIEDGER: Well, Mr. Chairman, I was going to refer to the so-called *Winner* case—*Attorney General for Ontario—V—Israel Winner*. Mr. Winner was operating a bus service into the province of New Brunswick from outside, and within the province of New Brunswick, and he was carrying passengers into the province, and out of the province to places outside the province, and he was also picking up passengers in New Brunswick and dropping them off in New Brunswick entirely within the province. The question arose as to whether that enterprise fell within federal jurisdiction or within provincial jurisdiction. The Supreme Court of Canada held that the operations of Mr. Winner in so far as they related to pure intra-provincial transactions—that is to say, picking up passengers in New Brunswick and dropping them off in New Brunswick—fell within the jurisdiction of the province, and that the other aspects of this enterprise fell within federal jurisdiction. But, when it went to the Privy Council, the Judicial Committee overruled the Supreme Court on that point. Perhaps I could refer honourable senators to a few pertinent passages from the judgment.

In this case the judgment was delivered by Lord Porter, and he said—I might say that in this case the province by legislation attempted to prohibit Mr. Winner from carrying on this operation in New Brunswick without a licence, and they refused to give him the licence. This case is reported in (1954) Appeal Cases at page 541, and also in Volume 3 of *Olmsted* at page 775. I am quoting now from *Olmsted* at page 816, where Lord Porter says this:

In their Lordship's opinion the action of the province was an incursion into the field reserved by the British North America Act to the Dominion.

He then says:

There remains, however, the further question whether, although the licence cannot be limited in the manner imposed by the board, Mr. Winner can, nevertheless, as the Supreme Court adjudged, be prohibited from taking up and setting down purely provincial passengers, i.e., those whose journey both begins and ends within the province.

The next paragraph reads:

Their Lordships might, however, accede to the argument if there were evidence that Mr. Winner was engaged in two enterprises, one within the province and the other of a connecting nature. Their Lordships, however, cannot see any evidence of such a dual enterprise. The same buses carried both types of passenger along the same routes; the journeys may have been different, in that one was partly outside the province and the other wholly within, but it was the same undertaking which was engaged in both activities.

Then he goes on at page 817:

No doubt the taking up and setting down of passengers journeying wholly within the province could be severed from the rest of Mr. Winner's undertaking, but so to treat the question is not to ask is there an undertaking and does it form a connexion with other countries or other provinces, but you can emasculate the actual undertaking and yet leave it the same undertaking or so divide it that part of it can be regarded as inter-provincial and the other part as provincial.

The undertaking in question is in fact one and indivisible. It is true that it might have been carried on differently and might have been limited to activities within or without the province, but it is not and their Lordships do not agree that the fact that it might be carried on otherwise than it is makes it or any part of it any the less an interconnecting undertaking.

At page 819:

... the undertaking is one connecting the province with another and extending beyond the limits of the province and therefore comes within the provisions of section 92 (10) (a) and is solely within the jurisdiction of the Dominion.

Finally, in the formal part of his judgment, he says:

As it is, their Lordships will humbly advise Her Majesty... it is not within the legislative powers of the province of New Brunswick by the statutes or regulations in question... to prohibit the appellant... from bringing passengers into the province of New Brunswick from outside the said province and permitting them to alight, or from carrying passengers from any point in the province to a point outside the limits thereof, or from carrying passengers along the route traversed by its buses from place to place in New Brunswick.

It was on the basis of this decision that we felt that there could be no doubt about the constitutionality of this provision, because the gas is carried over the same pipe line, over the same route, and it is an interprovincial pipe line. It does extend beyond the limits of the province, and, therefore, not only does this fall within the legislative jurisdiction of the Parliament, but is outside, as indicated in the Winner case, the legislative jurisdiction of the province.

Senator MACDONALD: Does that case go so far as to say that if that company carried passengers on a line from A within the province to B within the province, and did not extend beyond the province so far as that one run was concerned, that the federal Government would have control over it?

Mr. DRIEDGER: No, I think only if it formed a part of an interprovincial undertaking. That is the test.

Senator MACDONALD: In connection with this bill if gas is carried by the company not on its main line but from a point where a well is located to another point within the province, would the National Energy Board have control over that undertaking?

Mr. DRIEDGER: Yes, I think so because that line is part of the whole line of the company. It is part of its entire undertaking.

Senator MACDONALD: If it went from one point in the province, the point of source, to another point within the province and then stopped there—do you follow me?

Mr. DRIEDGER: Yes, but if the line over which it is transmitted forms part of the interprovincial undertaking then it would fall within the Winner case.

Senator MACDONALD: But if it were a subline?

Mr. DRIEDGER: Yes, but it is connected. I think the authorities are clear that where you have connecting lines, whether it is railway lines or something else, it all forms part of the undertaking. If this is a connecting line, then it would form part of the interprovincial pipe line and part of the undertaking that extends beyond the limits of the province. That was precisely the point in the Winner case where they were running buses from one city in the province, out of the province and then back in again and picking up passengers on the provincial highways and dropping them off.

Senator MACDONALD: But in the Winner case they were dropping the passengers off on the main route. They were not starting at point A and carrying passengers to point B and dropping them there and taking on other passengers and returning them to point A. I don't think the Winner case would bring that within the jurisdiction.

Mr. DRIEDGER: Perhaps on the return trip.

Senator BRUNT: Woudn't this be the analogy? In Ontario we have our branch railway lines that start at a point off the main line altogether and they come up to the main line with freight and it is turned over to the train on the main line. In such cases the rates are fixed by the Board of Transport Commissioners.

Senator REID: Would the principle that has just been enunciated apply in the case of a pipe line company in northern British Columbia that transmits the product to the shipper and it is liquefied aboard ship for transportation out of the country? Would that come under federal jurisdiction? Such a case might arise. There are ships on which liquid freezing of gas is done. I would like to know if the same principle would apply in such a case? Would it be considered to be entirely within the province? Would that matter come under the control of the National Energy Board?

Mr. DRIEDGER: I could not answer that question right offhand.

Senator LAMBERT: Is it not logical to assume that if this amendment goes through it will apply to export out of the country as well as between provinces?

Senator WALL: I do not know if I should pursue this point. I can appreciate the explanation that has been given but I still cannot see how, especially in the Saskatchewan area where it has been specifically stated that the provincial authorities are going to set the prices, this particular legislation does not in a sense trespass upon that. We may make a unilateral interpretation of what we think the intent of the act is here, but has there been any response from the provinces. Has there been any check made on this problem?

Senator MACDONALD: That is a point which should be taken up some time. Whether Mr. Driedger is the person to take it up, I do not know, but I think we should know whether the Government has been in touch with the provinces. We should be told whether the provinces have taken any exception to this legislation. We should know whether the provinces have been consulted. I am inclined at the moment to accept the explanation given by Mr. Driedger. He gave it quite clearly. But even assuming he is correct in his interpretation of the Winner case as it applies to this bill, we should give the provinces a chance to be heard.

Senator HORNER: Do you not think the provinces would have made representation and a protest?

Senator MACDONALD: I was going to ask if that had been done. I agree with you. We might be informed about that.

Senator REID: They might not know about it.

Senator BRUNT: Under Senator Wall's interpretation of this provincial statute he would have the province of Saskatchewan fixing the rates for Trans-Canada on gas that comes out of Alberta and British Columbia. He would have the province of Saskatchewan fixing the rates on that gas through the province, on his interpretation.

Senator HAIG: Take the gas that comes from British Columbia to Ontario. Manitoba and Saskatchewan would like to have it come from their provinces. Saskatchewan and Manitoba are producing a lot of gas and we could put a tax on Alberta gas passing through, say, Manitoba and shutting it out and saying, "We won't let it go through". Once it goes throughout the whole dominion, the dominion must have jurisdiction.

Senator MACDONALD: I was not questioning that. The only part I was questioning was the transportation of gas within one province. I agree entirely with Senator Haig that if it is carried beyond provincial limits—

Senator HAIG: In the southwestern corner of Manitoba we are producing over half what we use in the entire province. The output is increasing. If we want to shut out Alberta gas all we have to do is put a tax on their gas and give the local people a bonus. That is all we have to do.

Senator ASELTINE: I am prepared to accept the explanation that has been given by Mr. Driedger on this legal point.

Senator REID: Why are they deleting the words "from any place within a province to any place outside the province"? I have heard a lot of discussion but I have heard no explanation as to why these words are being deleted from the legislation. I want to hear an explanation before I agree to the amendment.

Mr. DRIEDGER: Perhaps I might say this: I cannot speak for the Government or indicate what their policy is, but I can only surmise that when this bill was passed in its present form it was intended then with the thought in mind perhaps that you could deal separately with gas moving from one province to another and there was not any occasion, any reason to be concerned about gas that was delivered locally; but probably now that the Board is in operation it has discovered that the two transactions are inextricably interwoven together, and that it is hard to deal with that unless part of the section is taken out. That has to do not, I suggest, with jurisdiction; I do not think it is a matter of Parliament's jurisdiction as much as it is a case of working the section out in actual practice. It was all written before there was any Energy Board, before they were operating at all, and the Board is now operating and this is one of the difficulties they have encountered. I think that is the reason for the proposed amendment.

Senator WALL: May I ask one last question? Pipe line "A" operates in full within a province, picking up gas at point "S" to take to point "Y", which is under the jurisdiction of the Public Utility Board or some governing body within the said province. Pipe line "B", because it is interprovincial, but is also delivering gas only within the province is picking it up at point "M" and delivering it to "N". Would they not be said to have provincial jurisdiction? That is the point of the bill?

Mr. DRIEDGER: Yes.

Senator MACDONALD: Mr. Driedger, you are satisfied that the facts in connection with the transportation of gas as is contemplated by this bill are sufficiently similar to the facts of the transportation of goods and people by those companies as set forth in the Winner case?

Mr. DRIEDGER: Yes, sir.

Senator MACDONALD: Notwithstanding the fact that judging from what you read I thought the learned Judge made a distinction between transportation by that company in a purely local manner from transportation along its main lines.

Mr. DRIEDGER: I think the point Lord Porter was making was that if this company was operating a distinct, separate enterprise that consisted of operations within the province, that would be a different matter. But in this case it was not separate, they were operating one enterprise, and he said you had to determine this not on the basis of what they might do but on the basis of what they were doing.

Senator MACDONALD: But this bill goes farther than that. Does it not also take in companies that are operating on just a purely local basis?

Mr. DRIEDGER: No, sir; then it would not come within the definition of the act of a company, and would not be in the act at all. It must be a company that operates an interprovincial pipe line.

Senator LAMBERT: There seems to be an inconsistency between clause 2 and clause 1 in this way, that the purpose of the second clause is to extend a period during which licences will continue in force beyond March 31, 1960 in order to allow sufficient time for the holding of public hearings before the National Energy Board for applications with respect to new licences for the exportation of electrical power. That means really postponing any decision on this matter for four years. Now, are they not establishing a principle in the first clause which, to my way of thinking, is inconsistent with the provision of extending the time for four years in relation to these licences that are in suspense?

Mr. DRIEDGER: I think the explanation is that section 61 is in a different part of the act than section 99. Section 61 deals with the transportation of oil and gas by interprovincial pipe line between provinces of Canada. Section 99 is in another part of the act altogether, that deals with the export of electricity and gas, and so on, so that it has no relation to section 61.

Senator LAMBERT: I see.

Senator MACDONALD: I do not know if this should be directed to this particular witness, but what is the purpose of clause 3 of the bill?

Mr. DRIEDGER: I think, sir, that clause 3 emphasizes, if it needs any emphasis, that we of the Department of Justice cannot foresee everything. The reason for it is this, that these licences expire at the end of March, and it is section 2 which continues these licences in force to pick up at the moment of expiration; and of course when we prepare legislation we have no idea when it is going to pass both houses or when it is going to get royal assent, and if we feel it is going to be a close race we put in a section that will shift that back to the actual date we want, March 30, even though the bill gets royal assent a few days or a short time afterwards.

Senator MACDONALD: What would be the position of those companies if they did not get royal assent until say May 1?

Mr. DRIEDGER: Well, they would be in default, that is all I can say, in that one section.

Senator MACDONALD: Would it put them out of business?

Mr. DRIEDGER: I don't know.

Senator BRUNT: They would have to break the law to put them out of business, because they would have no licence to export power.

Senator MACDONALD: Well, could the Energy Board close them up?

Senator BRUNT: Yes, if they so desired. They have got to break the law if they are going to export power after March 31 if this bill does not receive royal assent by March 31.

Senator MACDONALD: We are told that it is necessary to put this bill through by March 31, and if we don't there are going to be dire results. We were given the impression there would not be any gas transportation after that time.

Senator BRUNT: No, no, this is nothing whatever to do with gas; this is electric power.

Senator MACDONALD: Well yes, no electric energy would be transported after that date if they would not have any licences; and now reading the third clause of the bill, it seems through this witness that they are not going to affect the companies in any way whatsoever, and if the bill goes through on May 1 or a year from then everything they will have done will be declared illegal.

Senator BRUNT: That is right; but in the meantime the exporting of power is breaking the law.

Senator MACDONALD: Apparently the Government is not going to consider that very seriously.

Senator BRUNT: How would you feel if you were a company exporting power and your licence had expired?

Senator MACDONALD: I do not think that is the business of this committee. I think the business of this committee is to consider the position of the Government. It is true we are not part of the Government, but we are part of Parliament, and we are the ones that are enacting this legislation.

Senator BRUNT: I think we have to consider the welfare of 20 companies now operating under a licence to export power.

Senator MACDONALD: If we are considering welfare, I think we should have brought this bill to this house at least a month ago and not waited until March 29 to consider giving these companies a licence—when we have had since January 12.

Senator WALL: Hear, hear.

Senator HORNER: I have listened to that complaint for 25 years.

Senator MACDONALD: I do not think during the last 25 years any government has left these companies in this precarious position that they do not know whether they are going to carry on business within two days because they do not know how the Government is going to act. If this bill goes through this house today and we gave it third reading we would have to break the rules to do so, and if we do break the rules and give it third reading today it then has to go through the House of Commons.

Senator HAIG: It has been through the House of Commons.

Senator MACDONALD: Oh, no, it has not been through the House of Commons. That is what I have been wondering, what they are doing there. There are, how many, 21 cabinet ministers, 16 parliamentary secretaries and a whole army of other secretaries, and not one person over there apparently realized till last Thursday that these licences would expire within a week if we didn't put them through. I do not know what the Government is doing, or what the minister is doing, or the parliamentary assistants. I know they are busy, but still—

Senator HORNER: Well, they sit Mondays and Fridays and that is more than we are doing.

Senator MACDONALD: Then, why did they not send the bill to us sooner?

Senator BRUNT: If honourable senators would agree, I would suggest that we hear from the Chairman of the Energy Board who may be able to throw some light on this particular point.

The ACTING CHAIRMAN: In the interim, what Senator Macdonald has said will not be deleted, I take it.

Is it your wish to hear Mr. McKinnon?

Hon. SENATORS: Agreed.

Senator MACDONALD: Mr. Chairman, I would first like to ask one more question of the witness we have at the present moment before us.

Supposing we carried clause 2 and did not carry clause 1, and gave the provinces an opportunity to express their views, would that hold up the work?

Senator ASELTINE: I do not see how the witness could answer that.

Mr. DRIEDGER: Senator Macdonald, I am afraid I cannot answer that question. I do not know what effect that would have.

Mr. Ian N. McKinnon, Chairman of the National Energy Board:

The ACTING CHAIRMAN: Would you like to lead with your chin at this critical moment, Mr. McKinnon?

Mr. MCKINNON: Mr. Chairman, I have to apologize. The delay in bringing forward this bill was my fault. The bill was prepared in time by the Department of Justice—we had consulted with them on it, and the draft was sent over to me. I immediately sent back a letter acknowledging it and said we agreed with the draft. I did not know, Mr. Chairman, that it was the responsibility of the board to see that the bill was printed. For that reason it is my fault that this bill was delayed.

Senator MACDONALD: That does not excuse the Government, in my opinion, one particle.

Senator BRUNT: I think it does.

Senator MACDONALD: Not at all. The minister in charge of this bill certainly must have known the licences expired on March 31. How could he expect a new chairman of the Energy Board, efficient and capable as he is, to know all the details of this legislation. The witness did not put the bill through the house, he took it over. It is the minister who put it through the house, and it is the minister who should have known about it, and I retract nothing of what I said.

Senator LAMBERT: Mr. Chairman, we have had a month on this bill now. Would all this change anybody's idea as to what the bill is or what its purpose is. I would like to know a little more of the effect of this bill in relation to the whole operation of the energy problem in Canada. One assumes naturally that if we are going to hand over to the Energy Board a great deal more jurisdiction and power than was contemplated when the Act was passed a year ago, we should know all about it. Am I right in assuming that?

Mr. MCKINNON: The reason we seek this amendment is this, that when we examined the various pipe lines that would come within our jurisdiction and were giving consideration to the matter of tolls, we found there was one pipe line that purchases gas in northern Alberta and also purchases gas in northern British Columbia, sells some gas in British Columbia and sells some gas for export at the border. The board is not quite sure who would have jurisdiction over the gas that is purchased in British Columbia and delivered to British Columbia, which was going through the same pipe line as the gas that was being purchased in Alberta and was going to the border. We examined the Act, and as Mr. Driedger has already explained, the definition of "pipe lines" in the National Energy Board Act refers only to an interprovincial pipe line and the word "company" is also defined in the act as meaning a person having authority under a special Act to construct or operate pipe lines. So that the reference to both pipe lines and company under section 61 refers to pipe lines or a company that comes within the jurisdiction of the Parliament of Canada and under which this Board is also given jurisdiction over.

Senator REID: Who will decide if a company is under the jurisdiction of the federal Parliament?

Mr. MCKINNON: I can only go by the definition in the Act itself, and that definition says that a company means a person having authority under a

special Act to construct or operate pipe lines, and that is a special Act granted by the Parliament of Canada.

Senator REID: I am thinking of a provincial charter being given to a provincial company and then they start to do certain things that would be likely to be considered as coming within the jurisdiction of the federal Parliament. Who would make that decision as to which jurisdiction they are in? I am thinking of a company operating in northern British Columbia, who, in later years would be exporting gas.

Mr. MCKINNON: That would not be a company within the meaning of the National Energy Board Act.

Senator REID: It would not?

Mr. MCKINNON: No, sir.

Senator WALL: Mr. Chairman, may I ask Mr. McKinnon the definition of company. By the word "special Act": do you mean a special Act of the federal Parliament, is that what the interpretation is?

Mr. MCKINNON: Senator Wall, if you will look at section 2 (q) you will see an additional definition of special Act.

Senator MACDONALD: Mr. McKinnon, I am going to ask you about the provinces, whether in your opinion the provinces have any special interest in the provisions of this Act, with respect to the change making the powers of the Board not only in connection with transportation interprovincially but also provincially.

Mr. MCKINNON: Well, sir, I am sure the provinces want to maintain their own jurisdiction as far as they can. I am sure also that they claim they have jurisdiction—I am not a lawyer—over a pipe line that is wholly within the province, but as far as a pipe line that is interprovincial I have never heard of any province claiming to have jurisdiction over that pipe line.

Senator ASELTINE: Or any part of it.

Senator MACDONALD: Over the disposition of power within the province.

Mr. MCKINNON: This is a pipe line for gas. Do you mean electric power?

Senator MACDONALD: It was said a moment ago that it had nothing to do with gas.

Senator BRUNT: The second section has nothing to do with gas, but the first has. One section deals with gas and the other deals with electric power.

Senator LAMBERT: That is the point I was trying to make clear. If they are going to wait for four years, pending contracts, why should this have to be decided? As was pointed out, the last part has to do only with electric power, not gas. It is a good thing to have an act divided into several compartments, so that these matters can be disassociated one with the other. That was what was done in the case of the Canada Wheat Board.

Senator MACDONALD: Clause 1 of the bill applies to transport of gas.

Mr. MCKINNON: Yes sir.

Senator MACDONALD: In the case where gas is transported from one point within a province to another point within that province, would the provinces not come into the picture on this bill?

Mr. MCKINNON: I cannot speak for the provinces, sir.

Senator ASELTINE: They would not get anywhere.

Mr. MCKINNON: I would say if the line was wholly within the province, the province would want jurisdiction.

Senator MACDONALD: And I think you would grant them that jurisdiction.

Mr. MCKINNON: Yes.

Senator MACDONALD: I was not referring to that point. I was referring to the case where a line is not wholly within the province, but wherein gas is transported on the line to two points within that province.

Mr. MCKINNON: Well, sir, it did raise the problem which, as a matter of fact, came to the minds of the Board. That is, you would have some gas coming into the province at point "A", from outside the province, and some gas being taken off at point "B". The question arises as to who is to have jurisdiction over the toll. Would the National Energy Board have jurisdiction over the gas that came from another province? How would you decide which gas was sold at point "B"? How would you decide what gas was produced in the province and what gas came from outside the province? You would be under two jurisdictions, and I don't think it would work at all.

Senator MACDONALD: I can see the difficulty there. However, my question to the previous witness was: if gas is produced from a well in Alberta and is transported by an interprovincial company from the well at point "A" to point "B" in the same province, would that operation come within the jurisdiction of your Board? If I understood him correctly, and according to the judgment, the answer is that it would.

Mr. MCKINNON: If it was an interprovincial line, yes.

Senator MACDONALD: But it would not be an interprovincial system, so far as point "A", the well, to point "B", the termination of that line in the province, is concerned.

Mr. MCKINNON: But if it is joined to the other part, sir, it is under one management and one operation; it would be difficult to split the costs. But as I understand it from a jurisdictional point of view, all the lines, even if they are connected to an interprovincial line, are under the jurisdiction of the Parliament of Canada.

Senator MACDONALD: I understood Mr. Driedger to say that. My question now is, do you think the province would not object to that?

Mr. MCKINNON: Well, sir, I am not prepared to say.

Senator MACDONALD: May I ask one more question: have the provinces been consulted, so far as you know, about this proposed amendment?

Mr. MCKINNON: No sir.

Senator REID: I have one or two questions to ask the witness: The first follows a speech I made in the Senate about a company from Alberta that sold gas in British Columbia and also sold it across the line. Have you got control over the prices charged? Although that company was in existence before your Board came into being, have you any control over what prices the company sets?

Mr. MCKINNON: Section 61 gives us control over the tolls. The company to which you refer was the company that raised the issue in the minds of the Board as to how we could control the tolls under the present wording of the section. As you point out, part of the gas is purchased in Alberta and part is purchased in British Columbia; some is sold in British Columbia and some is sold at the border. I do not think you could have the tolls under two jurisdictions.

Senator BRUNT: Mr. McKinnon, your Board has power to renew these licences for the export of power.

Mr. MCKINNON: Only after a public hearing, under section 20 of the act.

Senator BRUNT: You cannot have a private hearing of your Board and renew them all?

Mr. MCKINNON: No sir.

Senator BRUNT: Is there any length of time for which you may renew them?

Mr. MCKINNON: Under the act we can give licences for up to a period of 25 years; previously the licences were renewed from year to year.

Senator BRUNT: I understand you would like to be able to grant licences for a longer period than one year, after a proper public hearing?

Mr. MCKINNON: Yes sir.

Senator BRUNT: It cannot be done at a private hearing?

Mr. MCKINNON: No sir.

Senator BRUNT: Is it possible to have 20 public hearings between now and the end of March?

Mr. MCKINNON: I am afraid not.

Senator REID: When an applicant comes before your Board to take gas from one province into another, has your Board the power to set the rates at which the gas will be sold?

Mr. MCKINNON: No. We have power to set tolls only.

Senator REID: You have nothing to do with the rate that is going to be charged to the consumers here or in the United States?

Mr. MCKINNON: No sir. Normally, the distribution to the consumer is done by a provincial company, and the control of prices to the consumer would normally be done by a public utility board in a province. We have control of the tolls on the gas, that is the transportation charge.

Senator REID: What I have in mind is the company in British Columbia, to which we referred, which sold the gas so much cheaper in the United States than in British Columbia. The point I was objecting to was, why should United States citizens get gas from Canada cheaper than our own citizens were getting it?

Mr. MCKINNON: I cannot speak on the question to which you refer, because that matter was settled under a previous act; but under the present act one of the things the Board is charged with doing is seeing that the price paid at the border is just and reasonable in relation to the public interest. That is the test we would normally apply.

The ACTING CHAIRMAN: Are you ready for the question?

Senator MACDONALD: Mr. Chairman, I personally want to co-operate with the Government in getting this bill through, notwithstanding their default; but at the same time, I think we have a duty to the provinces. I feel keenly that the provinces should have been informed about this legislation, and that has not been done. This bill will not go through the House of Commons until Thursday, at the earliest, if it goes through then; and in view of clause 3 of the bill, I do not think that house will feel it is such an urgent matter.

Could not the National Energy Board or the Government give us an undertaking that they will have a copy of this bill sent today by air mail to the provinces? They would have it in their hands to morrow, and could wire back any objection they may have.

Senator REID: After all, one of the functions of the Senate is to protect the provinces.

Senator MACDONALD: I quite agree with the senator from New Westminster. One of the reasons for the function of the Senate is to protect the interests of the provinces.

Senator HAIG: I am one of those fellows from a province, and I am here for the purpose of looking after that province. If Manitoba was not entitled by law to have six senators, I would not be here.

Senator MACDONALD: We have not all the provinces represented here. We are all members of the Senate.

Senator HAIG: No, we are put in here because we represent a province; not because we represent the Dominion.

Senator MACDONALD: I cannot tell you why you were put in here. You know more about that than I do, but we are put in here to protect the rights of any province. What is the objection to this bill's being sent to all the provinces immediately? I will not stand in the way of the bill, but by the time the bill gets to the other house the provinces will have been informed.

Senator HAIG: The provinces know all about this bill now. Manitoba knows about it as much as any province.

Senator MACDONALD: I asked the witness if it was sent to the provinces, and he said it was not.

Senator HAIG: We have electric energy coming into the province and we have electric energy going out of the province to another province. We have oil going out the province, and we have oil coming into the province. What else is there to learn about it? Our people have had that for a good many years. They know all about it, and there has not been one peep from them.

Senator MACDONALD: They have not seen the bill.

Senator HAIG: I am familiar with Manitoba, and there has not been one question to me in the 25 years I have been here with respect to any legislation in regard to protecting Manitoba against the Dominion of Canada—never once.

The CHAIRMAN: Senator Macdonald's question has to do with whether or not the provinces have been informed officially of this particular bill.

Senator HAIG: The point is that you do not have to notify anybody.

Senator MACDONALD: My proposal is that even at this late date the bill could be sent to each of the provinces. I do not know whether the witness is in a position to give an undertaking that that will be done. I do not know whether it is within the power of this committee when reporting this bill to recommend that a copy of it be forwarded to each of the provinces.

Senator LAMBERT: May I ask Mr. McKinnon—

The CHAIRMAN: I wonder if we could have some settlement of this, unless your question refers to it also.

Senator LAMBERT: I just want to ask Mr. McKinnon a question. He made the statement that he accepted the responsibility for this bill's arriving here at this time. If that is true has the National Energy Board not had the opportunity of hearing these points of view expressed in its various hearings?

Mr. MCKINNON: Not in this particular case. We have not had any rate or toll hearings so far. We were just considering this matter of tolls, and we were trying to figure out how we would deal with a case such as I have outlined, where the gas was purchased in Alberta, some purchased in British Columbia, some sold in British Columbia and some at the border, and we are—

Senator LAMBERT: This means a very basic change in the operations of these companies that are transmitting gas. If "the property of the company" as stated in the Act belongs to the company within the province, but is not the property of the company when it goes over the boundary into another province, or for export, then surely that fundamental principle is one that the Energy Board should have been getting some evidence about before this bill came down.

Mr. MCKINNON: Well, sir, we have been pretty busy since the Board was formed, and, as I say, we have not got around to fixing any tolls yet.

Senator LAMBERT: I do not think it is a matter of fixing tolls. I think the principle involved is whether the National Energy Board is going to have a much larger measure of power under this legislation than it did have before.

Mr. MCKINNON: I think it clarifies the situation, sir, more than anything else, because I do not know what you would do if part of that gas—

Senator LAMBERT: I am not objecting to your having it, but I think it is a very important thing, and that should be realized.

Senator HAIG: Yes, it should.

Senator LAMBERT: I think it is a very important matter. It is in my mind that before your Board was created we had applications for incorporation of gas transmission companies which were promoted for the purpose of making certain that some operators would control all the franchises which they might be able to use later on if it was possible to get a consuming public large enough. Your Board is functioning today, and I would think if a similar application of that kind came up you would have to give the permit, just as the Board of Transport Commissioners does, and judge whether or not it was a speculation in franchises, or was a legitimate application.

Mr. MCKINNON: Yes.

Senator LAMBERT: That is where I can see from my own experience that your Board, with its increased measure of power, might do a very useful service in conserving the resources of our country.

Mr. MCKINNON: It would puzzle us in respect to a line which comes under the jurisdiction of Parliament, and where we are given jurisdiction over it, to have somebody else come in and regulate the part dealing with tolls.

Senator LAMBERT: This would settle that, but I think what confuses me here is whether the provinces themselves are the people who are interested in this, or the corporations which are already operating within the provinces and interprovincially, and running businesses. The question is how far they are going to be regulated by this bill when they were not regulated before.

Senator HAIG: Question, Mr. Chairman.

Senator SMITH (*Queens-Shelburne*): I would like to hear Mr. McKinnon's comment on that. That is a very good question.

Mr. MCKINNON: If I understood you correctly, you wonder if the position of the companies is changed from what it was previously.

Senator LAMBERT: Yes, that is right.

Mr. MCKINNON: Well, I do not know, sir, if the Board of Transport Commissioners held any rate hearings prior to the inception of the National Energy Board. I do not think there has been any on gas, sir. There may have been something on oil. Now, I know as far as the province of Alberta is concerned that oil, for instance, produced in the Redwater field comes from Redwater to Edmonton through an interprovincial line. I think some of it must be taken off at Edmonton at the refineries, and some of the rest goes east, and some goes west. I know that the province has never considered that it had jurisdiction over that line. That is oil that is transported through a line which comes under the jurisdiction of the Parliament of Canada.

Senator LAMBERT: Does the Westcoast Transmission line go from Alberta to British Columbia?

Mr. MCKINNON: Yes, sir, it comes from just within the Alberta-British Columbia boundary and then goes through northern British Columbia and then down south to Vancouver, and on to the border.

Senator LAMBERT: That enterprise was certainly subject to a good deal of discussion before the Board of Transport Commissioners, before your Board came into existence.

Mr. MCKINNON: I do not know if it was before the Board of Transport Commissioners. It was discussed before the Borden Royal Commission. I do not know that it was ever—

Senator LAMBERT: When the application for the incorporation, or for the permit, was made it certainly was discussed.

Mr. MCKINNON: Yes sir.

Senator LAMBERT: And it was argued pretty strenuously, too. That is why I am asking this other question about your Board. It would function in connection with a case of just that sort?

Mr. MCKINNON: Yes, sir. If this amendment went through, sir, we would be able to set the tolls on all the gas. There was some doubt before whether we could set the tolls on all the gas or whether some of it came under the jurisdiction of somebody else.

Senator LAMBERT: And you would have to take into consideration the cost of gas to the consumers in Vancouver, for example?

Mr. MCKINNON: As the section now reads, it provides that:

61. Where the gas transmitted by a company through its pipe line from any place within a province to any place outside the province is the property of the company, such proportion as the Board may fix of the differential between the amount paid by the company for the gas and the amount for which the gas is sold by the company shall for the purpose of this Part be deemed to be a toll charged by the company to the purchaser for the transmission thereof.

There was some doubt in the minds of the Board, and in the case of the West Coast Transmission, whether we would be able to set the tolls of all the gas or whether some of the gas produced in British Columbia and sold in British Columbia would not be within our jurisdiction.

Senator REID: Do you say that this is strengthening your hand, if we adopt this amendment?

Mr. MCKINNON: At least it would clarify the Board's position and we would then be sure that authority was given to the Board to regulate the tolls for all the gas being transported through a pipe line that came within the jurisdiction of the Parliament of Canada.

The CHAIRMAN: Gentlemen, do you wish to consider Senator Macdonald's proposal as a matter of courtesy?

Senator ASELTINE: I think we have had a very fine discussion of the legal angles and everything else in connection with the bill. I suggest we pass it and then instruct the Clerk to send a copy of the bill to the provinces concerned along with a letter notifying them that the bill has been considered in committee and approved and that it will be coming up in the House of Commons. Is there any objection to that?

Senator REID: Is it up to the committee to send out copies to the provinces? Is it within our jurisdiction? Is that not the job of the Government? This is a Government bill. However, I am not going to object to it. I am just drawing your attention to this point.

Senator MACDONALD: I quite agree with Senator Reid that it may not be strictly our job but—

Senator ASELTINE: Isn't that splitting hairs a little bit?

Senator MACDONALD: I think the time is late and I think the suggestion of the honourable Leader of the Government is a good one. If he would move it I would second it.

Senator SMITH (*Queens-Shelburne*): Before we come around to the motion, which might include the final adoption of the bill, I would like to ask Mr. McKinnon what body has jurisdiction for controlling the tolls on gas in the situation such as he has described, and where you are now seeking to get that clear jurisdiction for control.

Mr. MCKINNON: That is the part we were not sure of.

Senator SMITH (*Queens-Shelburne*): Who is now operating in that field? Is there any check on tolls for the carrying of the gas?

Mr. MCKINNON: I can only say that there has been no hearing to my knowledge with respect to the tolls being charged by the West Coast Transmission Company.

The CHAIRMAN: Gentlemen, for the information of the Clerk what is the exact wording of the proposal of the motion with respect to sending copies of the bill to the provinces?

Senator BRUNT: That copies be sent to the ministers.

Senator MACDONALD: I don't know who the appropriate ministers would be and there would probably be a delay in finding this out. Why not send them to the Premiers or Attorneys-General?

Senator BRUNT: Whatever you wish.

Senator ASELTINE: I think the Attorneys-General.

Senator MACDONALD: Yes.

The CHAIRMAN: Is it agreed that copies of the bill be sent to the Attorney-General of each province?

Some Hon. SENATORS: Agreed.

The CHAIRMAN: What is your wish with respect to the bill?

Senator ASELTINE: I move that the bill be reported.

Senator SMITH (*Queens-Shelburne*): First of all, is there no power now held by the National Energy Board or has the Government not power by order in council to extend from day to day, almost, these licences which are mentioned in connection with section 2.

Mr. MCKINNON: Not as far as I know, sir. In this connection I would refer you to section 20 of the bill which says:

Hearings before the Board with regard to the issue, cancellation or suspension of certificates or licences shall be public, and the Board may hold public hearings in respect of any other matter if it considers it advisable to do so.

It is a mandatory requirement on the Board to hold a public hearing before any certificate or licence is issued.

Senator REID: May I clarify something in my own mind? Will there come a time when the rates charged by the West Coast Company will come before you?

Mr. MCKINNON: I imagine they will, sir. We will start off by reviewing the tolls. They file the tolls with us and we will review the earnings of the company. I don't know whether an application will be made but we will be watching the situation, and of course if anybody wants to apply for a hearing the Board will have to set a date.

Senator REID: We in British Columbia feel very strongly in this matter.

Mr. MCKINNON: Section 99 of the act provides that:

A licence issued under the Exportation of Power and Fluids and Importation of Gas Act before the coming into force of this Act shall be deemed to have been issued under this Act, subject to the terms and conditions set out in the licence or applicable thereto under the Exportation of Power and Fluids and Importation of Gas Act or the regulations thereunder.

We would apply different tests to a new licence than we applied under the previous regulation.

The CHAIRMAN: It has been moved by Senator Aseltine, seconded by Senator Haig, that the committee approve this bill without amendment.

Hon. SENATORS: Agreed.

The CHAIRMAN: And then there is the usual motion for authority to print 800 copies in English and 200 copies in French of the proceedings of this committee with respect to this bill.

Hon. SENATORS: Agreed.

The committee thereupon adjourned.

6
Third Session—Twenty-fourth Parliament

1960

THE SENATE OF CANADA



PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the

Bill C-69, An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1960 to the 30th day of June, 1961, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company.

The Honourable **SALTER A. HAYDEN**, *Acting Chairman*

WEDNESDAY, JUNE 22, 1960

WITNESSES:

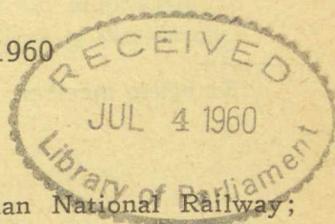
Mr. Pierre Taschereau, Solicitor for the Canadian National Railway;
Mr. Donald Gordon, Chairman of the Board and President of the Canadian National Railway; Mr. R. T. Vaughan, Assistant to the President of the Canadian National Railway.

APPENDIX:

Capital Budget and Estimated Income Account—Year 1960.

REPORT OF THE COMMITTEE.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960



THE STANDING COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable ADRIAN K. HUGESSEN, *Chairman*

The Honourable Senators

| | | |
|-----------------------------------|------------|---------------------------|
| *Aseltine | Gladstone | Molson |
| Baird | Gouin | Monette |
| Beaubien | Grant | Paterson |
| Bishop | Haig | Pearson |
| Blois | Hardy | Power |
| Bouffard | Hayden | Quinn |
| Bradley | Horner | Raymond |
| Brunt | Hugesen | Reid |
| Buchanan | Isnor | Robertson |
| Campbell | Jodoin | Roebuck |
| Connolly (<i>Halifax North</i>) | Kinley | Smith (<i>Queens-</i> |
| Connolly (<i>Ottawa West</i>) | Lambert | <i>Shelburne</i>) |
| Courtemanche | Lefrançois | Smith (<i>Kamloops</i>) |
| Dessureault | *Macdonald | Stambaugh |
| Emerson | McGrand | Veniot |
| Euler | McKeen | Vien |
| Farris | McLean | Woodrow—(50) |
| Gershaw | Méthot | |

50 members

(QUORUM 9)

**Ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate.

THURSDAY, June 16th, 1960.

"Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator Pearson, that the Bill C-69, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1960 to the 30th day of June, 1961, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 22nd, 1960.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.30 A.M.

Present: The Honourable Senators Aseltine, Beaubien, Blois, Brunt, Buchanan, Euler, Gershaw, Haig, Hayden, Isnor, Kinley, Lambert, Reid, Smith (*Queens-Shelburne*), Smith (*Kamloops*), Stambaugh, Veniot and Woodrow.—18.

In the absence of the Chairman and on Motion of the Honourable Senator Beaubien, seconded by the Honourable Senator Haig, the Honourable Senator Hayden, was elected Acting Chairman.

In attendance: E. Russel Hopkins, Law Clerk and Parliamentary Counsel and the official reporters of the Senate.

Bill C-69, An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1960 to the 30th day of June, 1961, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company, was read and considered clause by clause.

On Motion of the Honourable Senator Brunt, seconded by the Honourable Senator Isnor, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

Heard in explanation of the Bill: Mr. Pierre Taschereau, Solicitor for the Canadian National Railway; Mr. Donald Gordon, President of the Canadian National Railway; Mr. R. T. Vaughan, Assistant to the President, C.N.R.

A brief concerning the Capital Budget and Estimated Income Account for the year 1960 was produced.

It was Resolved to report the Bill without any amendment. At 12.30 P.M. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

OTTAWA, Wednesday, June 22, 1960.

The Standing Committee on Transport and Communications, to which was referred Bill C-69, an act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1960 to the 30th day of June, 1961, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company.

Senator Salter A. Hayden in the Chair.

The CHAIRMAN: Honourable senators, the first witness will be Mr. Pierre Taschereau, solicitor for the Canadian National Railway.

Mr. Pierre Taschereau, Solicitor, Canadian National Railway: Mr. Chairman and honourable senators, the principal purpose of the bill before you is to authorize the provision of moneys to meet the capital expenditures of the Canadian National Railways during the calendar year of 1960, as well as during the first six months of 1961. Under existing C.N.R. legislation the company's annual budget is under the control of the board of directors, and must be submitted first to the Governor in Council for approval, and later to Parliament.

This annual budget comprises, among other things, a statement of the capital expenditures for the calendar year in which it is prepared. Because the necessary legislative authority cannot be obtained for the financing of expenditures until mid-year, the budget also includes a statement of capital requirements for the first six months of the ensuing year. The bill before you, therefore, covers the capital required for an 18-month period from January 1, 1960 to June 30, 1961.

The Honourable senators have before them, I believe, a copy of the annual budget. The bill when it is passed would give effect to this budget and enable us to finance the capital expenditures that the budget calls for.

Senator HAIG: Does the budget include income as well?

Mr. TASCHEREAU: Yes. The last page of the budget, I believe it is page 9, shows the operating budget.

Senator HAIG: Does that show the net revenue and net expenditure in the year?

Mr. TASCHEREAU: That is right: Operating revenues, operating expenses, and net operating revenues.

Senator HAIG: But that does not include interest on the money.

Mr. TASCHEREAU: The penultimate item shows, available for fixed charges \$46,700,000.

Senator HAIG: What is your estimate of deficit on that statement?

Mr. TASCHEREAU: \$24 million.

Senator HAIG: That is for six months.

Mr. TASCHEREAU: That is for the year 1960 as a whole.

Senator KINLEY: You are more optimistic than you were last year.

Mr. TASCHEREAU: We have shown a comparison with 1959. The 1959 deficit is \$43,588,000.

Senator HAIG: And what is the figure for the year 1958?

Mr. TASCHEREAU: The 1958 deficit was \$51,591,000.

The CHAIRMAN: What did you estimate your deficit at a year ago?

Mr. TASCHEREAU: \$34,400,000 was the estimate.

Senator HAIG: And what is it for this year?

Mr. TASCHEREAU: For 1959: we ended up with an actual deficit of \$43.58 million.

The CHAIRMAN: Will you continue, Mr. Taschereau?

Mr. TASCHEREAU: The bill may be divided into several parts, and if you will permit me I would like to give a general explanation of each part and then relate the relevant figures that appear in the bill.

The first part is contained in clause 3. This clause sets out the capital requirements of both C.N.R. and T.C.A. during the 18-month period running until the end of June next year.

The second part consists of clauses 4, 5, 6 and 8. These clauses in general authorize C.N.R. to borrow money for the purpose of meeting in part the capital expenditures of both C.N.R. and T.C.A. by means of temporary loans from the Minister of Finance and by means of securities that are issued to the public and are guaranteed by the Government of Canada.

The third part is section 7 and it enables C.N.R. to assist its subsidiaries financially within the limits stated by the act.

The fourth part consists of sections 9 and 10. These clauses enable the Minister of Finance to place amounts at the disposal of C.N.R. and T.C.A. if at any time between the coming into force of the Act and July 1 of next year either one of the companies or the two of them find themselves unable to meet their operating and income charges.

The fifth part is section 11. This clause is not to be found in the earlier legislation, the Financing and Guarantee acts which were passed before you in recent years. The reason why it has been included in the legislation this year is that under the Canadian National Railways Capital Revision Act the authority of the Minister of Finance to purchase preferred stock in the amount of 3 per cent of the gross annual revenue expires at the end of 1960 and this authority would thus be in-existent for our interim financing over the first six months of 1961.

There is another provision in the Capital Revision Act that expires at the end of 1961 and it is proposed by this section to extend to the same termination date the existing authority of the minister to purchase the preferred stock.

The CHAIRMAN: That is in section 6?

Mr. TASCHEREAU: Section 6 of the Canadian National Railways Capital Revision Act.

The sixth and last part, which is clause 12, appoints Mr. J. A. De Lalanne as independent auditor to make the audit of our accounts for the year 1961. Mr. De Lalanne was appointed as auditor for the year 1960 by the Financing and Guarantee Act of last year.

Senator REID: Is he an individual or a company?

Mr. TASCHEREAU: He is an individual.

With your permission I would now like to come back to the first and second parts of the bill, principally clauses 3, 4 and 6. These are the parts that cause the greatest difficulty in understanding because they contain various figures

which on their face do not tie in one with the other. I shall try to give as clear an explanation as I can, as to the reason why the total amounts that are shown in section 3 do not correspond with the figure that is shown in clauses 4 and 6.

I think it is important to mention a basic feature of the legislation and that is that it deals with two different matters. Section 3 deals with the total amount in dollars that are at play in the capital projects that are planned by the C.N.R. in the 18-month period from January 1 of this year to July 1 of next year. Sections 4 and 6 deal with the other phase of the matter, which is external financing of these projects by borrowings. While the capital requirements of the C.N.R. and T.C.A. are of the order of \$309 million, as you will see from paragraph (a) of clause 3 (1), and \$86 million for the first six months of 1961, as you will see from paragraph (d) of the same clause, or a total of \$395 million for the 18-month period, the C.N.R. has available for financing these needs sources other than borrowings from the minister or from the public. These sources consist of depreciation accruals and other similar items which over the period in question will amount to \$162 million. Canadian National Railways is therefore in a position to finance itself without borrowing to the extent of \$162 million.

Senator BRUNT: Have you the difference in cash flow in and out?

Mr. TASCHEREAU: I was going to come to that later.

If you deduct this figure of \$162 million from the total of \$395 million which represents our capital requirements you obtain a figure of \$233 million. Now we will not, in our estimation, be able to complete in 1960 some part of our capital projects, and that will arise from various reasons, such as unavailability of materials or labour and so on. We estimate the total dollar value of work that will thus remain incomplete at \$30 million. If you deduct that figure of \$30 million from that of \$233 million you arrive at a total of \$203 million, which is the total amount shown in clauses 4 and 6. It is also the figure that is shown at the bottom of the explanatory notes at the back of page 2 of the bill. This amount of \$203 odd million is the maximum amount which the Minister of Finance will have authority to lend to the C.N.R. and that C.N.R. will have power to borrow from the minister or the public under this act. In actual fact C.N.R. will borrow much less than this because we estimate that we will sell to the minister during the period in question preferred stock to the extent of \$33.8 million. Deducting this amount of \$33.8 million from the maximum amount that we can borrow, \$203 million, you have a total of \$170.15 million which represents the actual amount that we expect to borrow in 1960 and the first six months of 1961. This amount is made up in the following manner: C.N.R. borrowing for 1960 will be \$62.8 million; for 1961, for the first six months, \$5 million. Total borrowing on account of C.N.R. will be \$67.8 million. T.C.A. borrowing for 1960 will be \$82.35 million; T.C.A. borrowing in 1961, the first six months, will be \$20 million, or a total for T.C.A. of \$102.35 million.

These two figures of \$67.8 million and \$102.35 million for the C.N.R. and T.C.A. respectively, total \$170.15 million, which is the figure I mentioned earlier and that represents the amount that we will likely borrow during the 18-month period.

Senator ISNOR: Thinking back from 1952 and 1954 and future years, would not we and the public in general have a clearer picture of the operations of the C.N.R. and the T.C.A. if they were divided and shown in separate bills in so far as borrowing is concerned?

Mr. TASCHEREAU: That may be so, sir. The reason why T.C.A. has been included in this legislation traditionally is not only that its capital stock is wholly owned by C.N.R., but the procedure that has been found to be most convenient to all has been that the C.N.R. acts more or less as a banker for

T.C.A., and there is just one channel of communication with the Minister of Finance when it comes to drawing moneys for the purposes of financing. Another reason is that T.C.A.'s capital requirements have in the past been much smaller than those of the C.N.R. I realize that this year so far as borrowing is concerned T.C.A.'s requirements are larger than the C.N.R.'s, but this is a situation that does not present itself too often.

Senator REID: May I ask if you are responsible for making T.C.A.'s representations to Parliament, or does T.C.A. make its own representations?

Mr. TASCHEREAU: No, T.C.A. make their own representations; they run their own budget. C.N.R., of course, under the existing legislation, nominates five of the nine directors of T.C.A. Four of the nine directors are appointed by the Governor in Council, but that is the only connection in so far as that is concerned.

Senator LAMBERT: So far as the official management of the C.N.R. is concerned they have nothing to do with it, I suppose?

Mr. TASCHEREAU: That is right, sir.

The CHAIRMAN: All you are dealing with here with regard to T.C.A. is their capital requirements?

Mr. TASCHEREAU: Their capital requirements for financing purposes are included in the bill, otherwise we would have duplicate legislation.

Mr. GORDON: On Senator Isnor's point, one of the other reasons for putting it through in the form it is is that a separate issue on behalf of the T.C.A. would be relatively small on the market, and it is not considered advisable to introduce into the market a new kind of paper with a Government guarantee, because by reason of its relatively small size it would have a relatively small market and would not be attractive to the public or have a favourable market.

Senator ISNOR: I appreciate that, but I am thinking of the future, as I mentioned a moment ago, of both the C.N.R. and the T.C.A. I should think borrowings in the future of T.C.A. might be proportionately larger than the C.N.R.

Mr. GORDON: Let me at least say I hope so. But the question is in regard to the type of market paper. Now, the disclosure of the T.C.A. borrowing is quite clearly made in both the T.C.A. statement and in the presentation by the president when he appears before the sessional committee of the House of Commons. He discloses fully the financial requirements of T.C.A., so that there is no lack of information on it. But the narrow point we are discussing now is whether or not it is advisable to introduce into the market a new kind of paper, and the financial advice in that respect, which includes the Minister of Finance's department, is that it is not advisable and that we do a better job for T.C.A. in the matter of price of their issue when it is added on to a C.N.R. issue and becomes part of the market availability.

Senator EULER: Would it not be equalized, since the T.C.A. bonds and debentures would also have a Government guarantee?

Mr. GORDON: Yes, but the amount outstanding in the market would be relatively small with the T.C.A. paper. If you want to get a trading market with a guaranteed Government bond it is wise to have a large amount to trade in, and the relative amount of T.C.A. is small.

Senator EULER: The buying public would think the one as good as the other, would it not?

Mr. GORDON: Yes, but you see you are dealing with very large amounts, and as far as the individual is concerned a \$1,000 bond or so, that is neither here nor there, but when you are trading in matters of hundreds of thousands, and even millions of dollars, as insurance companies do, or as trust funds do,

they look for a bond which would give them sufficient to get trading in, and that trading market would not be available in the case of T.C.A. because of its relatively small size. I should add this, that in the financing arrangements the cost of the issue to the T.C.A. is exactly the same as it is for the C.N.R. In other words, we recover from the T.C.A. the actual cost of the issue of these bonds, so that the T.C.A. pays the cost of raising the money, but as I said before, they get a beneficial rate by being part of a larger issue.

Mr. TASCHEREAU: I have refrained from mentioning so far paragraph (c) of clause 3(1). This paragraph ought to be read separately from the financing provisions of the bill, because all it does is to authorize us to make contractual commitments up to a maximum amount prior to July 1 of next year. The bill does not authorize us to actually spend any money under paragraph (c). We will have to come back to Parliament next year or in an ensuing year to get authority to finance any expenditure that is envisaged in this particular paragraph. This is borne out by subclause 5 of clause 3, which reads:

Any amount payable under a contract entered into pursuant to paragraph (c) of subsection (1) shall be included in the annual budget of the National System for the year in which it will become due and payable.

Senator HAIG: The witness is explaining what we are doing, but where do you show your income in this statement?

The CHAIRMAN: That is on page 9.

Senator HAIG: But you just estimate the income, what the income would be on page 9.

The CHAIRMAN: That is all you can do before you can get it.

Senator HAIG: Yes, but what did he get last year on that item, and the year before?

The CHAIRMAN: Last year's figure is in column 2 on page 9.

Senator HAIG: This is all right to explain the details of this thing. We cannot refuse to pass the bill, because both the money and the railway are there, and the railway must either be financed or we would have to shut it up.

The CHAIRMAN: The actual operating revenue for 1959 is shown on page 9 as being \$740 million.

Senator HAIG: It is all right to listen to this, Mr. Chairman, but I want to get the start of this thing, I want to know where we started this money business. I sat in the committee and heard all about it. I would like to be brought up to date. The witness is dealing with the present time, and I want to get back to the beginning. We wrote off \$1 billion, and I would like him to tell us what happened to that \$1 billion.

The CHAIRMAN: We are almost through with this phase, and I would suggest that Mr. Taschereau finish first, and if you will be patient he will deal with your question then.

Mr. TASCHEREAU: I am finishing the technicalities of the bill, and I shall not be long, and then I will answer your question, sir.

Now, I was going to say that except for clause 11, which I have mentioned especially, the bill is similar in form to the financing and guarantee Bills which have been examined before this committee in previous years. It contains the usual provisions such as, for example, the prohibition in subclause (6) of clause 3 against spending any amount for a purpose specified in clause 3 in excess of the amount authorized in clause 3 in respect of that purpose.

I trust the members of the committee are familiar enough with these provisions that I do not need to say more about them, but I will be glad, of course, to answer every question on legal points that the honourable senators may wish to raise.

There is another reconciliation of figures which could be useful to the senators, and that is a reconciliation of the figures appearing in the budget with the figures appearing in the bill. If you look at page 1 of the budget you will find at the bottom under 1960 expenditures the amount of \$279 million odd. That represents the capital budget for 1960 including T.C.A. It is made up of the amount of \$309 million shown in paragraph (a) of clause 3 (1) of the bill less \$30 million for uncompleted work. In other words, our capital projects for both C.N.R. and T.C.A. amount to \$309 million, but we will likely not be in a position to complete these projects this year because of uncontrollable elements, and we figure the dollar value of what we will be unable to complete is \$30 million. So, you have there a reconciliation between \$309 million shown in paragraph (a) of clause 3 (1) of the bill and the figure at the bottom of page 1 of the capital budget.

Now, the figure of \$86 million shown just below the middle of page 2 of the budget is the same as the figure mentioned in paragraph (b) of clause 3 (1). The last figure on page 2 of the budget, being \$51 million, is the same as the figure appearing in paragraph (c) of clause 3 (1).

I will be very glad, honourable senators, to answer any questions which you may have.

Senator SMITH (*Queens-Shelburne*): I would just like to ask a very short question. If you anticipate you are not going to be able to spend a certain amount would you explain the reason for putting the larger amount in the bill?

Mr. TASCHEREAU: Well, the reason why we have a larger amount in the bill, sir, is that this amount truly represents the amount that we would spend on capital projects in 1960 if we were able to complete these projects—if we could control all elements that enter into the work. We believe that out of this amount of \$309 million, because material will not be available in connection with a particular project or there will be a strike, or other matters such as this, there is an amount of \$30 million that we will not be able to spend. We are so sure of this that we do not request financing in connection with the \$30 million. This amount of \$30 million is deducted before we arrive at the maximum amount that we can borrow for the purpose of meeting our capital expenditures.

Senator ISNOR: Am I correct in saying that the \$51 million referred to in subsection (3) of section 3 is a suspended liability in so far as the deficit of the C.N.R. is concerned?

Mr. TASCHEREAU: Sir, this permits us to sign contracts and give orders for equipment, and so on, before the middle part of next year, but we expect that the expenditure will come in course of payment after that period. It may be in the latter part of 1961 or 1962 or 1963. That is the reason why subclause (5) has been put in. It says that we cannot spend any money for that purpose but we can commit ourselves. We tell Parliament the extent to which we expect to make commitments during the period covered by the bill.

Senator ISNOR: My point is that if you enter into contracts amounting to \$51 million then there is a liability, or a suspended liability, if you wish, on the C.N.R.?

Mr. TASCHEREAU: Yes, that is right, sir.

Senator EULER: You are authorized to spend it, except that you think you cannot get the labour?

Mr. TASCHEREAU: No, we cannot spend the money, sir. We call it a commitment authority, as Mr. Vaughan reminds me. Subclause (5), which I will read again, says:

Any amount payable under a contract entered into pursuant to paragraph (c) of subsection (1) shall be included in the annual budget of the National System for the year in which it will become due and payable.

Senator EULER: It will have to be re-voted next year?

Mr. TASCHEREAU: Yes, quite.

The CHAIRMAN: Yes, the money will have to be voted next year.

Senator BRUNT: Yes, it will have to be set up in the next budget.

The CHAIRMAN: Mr. Taschereau has finished his statement. Are there any questions you wish to ask Mr. Taschereau, or that you wish to put forward? If there are we will get the answers from one of those present. Do you wish to put your questions now, Senator Haig?

Senator HAIG: Yes, I will put them now. Is Mr. Gordon answering them?

Senator KINLEY: It will be between them.

Senator HAIG: In what year was the billion dollars written off the liability of the Canadian National to the Government?

Mr. DONALD GORDON, *President, Canadian National Railways*: Well, it was not a billion dollars, but I presume you have reference to the 1952 revision, Senator Haig. I think I could make a very simple answer to your question which will bring the figures right before you, if you will let me proceed in my own way.

Senator HAIG: I am quite agreeable to that.

Mr. GORDON: I am going to ask you to look at the balance sheet that appears in our annual report. That balance sheet, you will find, reflects all of the capital invested in the C.N.R. The only amounts that do not appear in that balance sheet and the only amounts that do not appear in the books today, represent the income deficits which were written off back in the 1937 revision, and also the worthless stocks of the C.N.R. predecessor companies which were written off. I want you to keep clearly in mind that those stocks of the predecessor companies were declared worthless, and Canada did not pay anything for them. In other words, there was no investment figure made by the Government of the day in connection with those worthless stocks which were written off in 1937.

Senator HAIG: Yes, but I want to go back to the revision of 1951, because I was here—

Mr. GORDON: I will come to that in a moment. If you look at the balance sheet you will see a figure under the heading of "Shareholders' Equity".

Senator ISNOR: On what page is that?

Mr. TASCHEREAU: Page 27.

Mr. GORDON: This will clear up your question and give you an up-to-date understanding of exactly what has gone into the C.N.R.

Now, what has gone into the C.N.R. in the form of a capital investment by Canada is, first of all, the shareholders' equity, the total of which is \$1,728,-413,271. That is direct equity investment by the Government. Secondly, if you look up above under the heading of Long Term Debt you will see that the Government had at December 31, 1959, loaned to the C.N.R. a total of \$345,684,052.

In addition to that we have outstanding securities in the hands of the public which represent an investment in the C.N.R. enterprise, the total of which is \$1,341,058,970. If you take the total of these two items, namely, the long term debt, which is \$1,686,743,022 and add to that the shareholders equity, which is \$1,728,413,271 you arrive at a total figure of \$3,415,156,293. That represents the capital invested by Canada in the C.N.R., part of which has been direct by the Government and is in the name of the Government, and the other part, namely, \$1,341,000,000 represented by bonds in the hands of the public. In other words, the public have loaned that money to the C.N.R. and we are obligated to pay the interest on it. That, I think, answers your main question and that is the amount of investment in the C.N.R., \$3,415,156,000.

Senator HAIG: They wrote off \$1 billion on that—

Mr. GORDON: Just a moment. What happened there is that there was no write-off. There was a transfer of fixed interest debt securities to preferred stock and, if you will observe there under shareholders' equity there is a total of 904,489,263 shares of 4 per cent preferred stock outstanding. What was done in 1952 was that a portion of the debt, the interest-bearing debt which was then held by the Government, was converted into preferred stock. The total of that was \$736 million in round figures and that is the figure you have in mind and which you referred to in round figures as \$1 billion. It is actually \$736 million and I would rather give that in as the round figure than \$1 billion. But that is the amount converted into preferred stock.

Senator HAIG: Do we consider the preferred stock as being worth anything?

Mr. GORDON: It will be worth whatever it will earn in due course. I cannot imagine private enterprise accepting the rate of return but it is very wrong to consider the investment in the C.N.R. as being worth nothing. That is just not so. An investment in the C.N.R. is an asset and while temporarily it is not returning the full amount of its interest—

Senator HAIG: Let me interrupt. Do you mean to tell me right now that if we wrote it off the C.N.R. could carry itself?

Mr. GORDON: If we did what?

Senator HAIG: If you say there was no debt against the C.N.R. it could carry itself?

Mr. GORDON: If there was no debt, certainly it would.

Senator HAIG: Well, you are not doing it.

Mr. GORDON: Certainly we are. We have shown operating surpluses every year since 1923. If you look at the figures of last year we showed a deficit of \$43.5 million. That deficit arises merely as a shortage in the amount of earnings to pay the interest, but remember in that same year—we developed \$106 million of depreciation.

Senator HAIG: Did you take into that estimate the cost of the depreciation of the assets which are depreciating all the time?

Mr. GORDON: Absolutely, sir. Not only that but a very handsome and generous depreciation based on the formula set down by the Board of Transport Commissioners. I could easily show a surplus in the C.N.R. if I showed my accounts in the same way the province of British Columbia shows the P.G.E.

Senator HAIG: Why did you show a deficit last year?

Mr. GORDON: It is a matter of accounting. We charged against operating a total of \$106 million for depreciation charges, amortization and things of that kind. There are two or three ways of describing this deficit. I could show quite easily in my accounts that we had a surplus of \$60-80 million but that we fell

short by some \$45 million of earning our depreciation. That is the way some private enterprises would show it. We fell short of earning our depreciation by some \$43 million, but a very minor adjustment in our rates of depreciation which, after all, in many cases is a matter of opinion, would have shown a surplus. I do not want to assure you the C.N.R. is carrying full charges for depreciation and still paying interest on outstanding liabilities to the public as well as on the borrowings that we are making from the dominion Government. We are paying that and, as I say, it depends on how you look at it. We fell short last year to the tune of \$43 million either in earning our depreciation or meeting our fixed charges. It does not matter how you describe it.

Senator KINLEY: Do replacements enter into the picture?

Mr. GORDON: Yes, definitely. Replacement of equipment is what we are setting up depreciation for. Incidentally, one of our difficulties has been that we are replacing assets in the form of equipment at a very much higher price today than the original price on which we set up our depreciation. That is one of the great problems of inflation.

Senator EULER: Is that depreciation realistic? You have written off over \$100 million. Is that realistic or are you obliged to put that much in by some regulation?

Mr. GORDON: Yes, by the Board of Transport Commissioners which sets the formula for depreciation, and that is fully in accord with that formula.

Senator SMITH (*Queens-Shelburne*): Mr. Gordon, you mentioned a moment ago that the P.G.E. treated the matter differently than you do. Do you know if any other lines, particularly in the United States, might treat it the same as the P.G.E.?

Mr. GORDON: Not wholly, but the question arises as to what degree of depreciation does it take? The United States lines would be bound by the Interstate Commerce Commission's rules, I assume. I do not know in detail about every railway but if they are following the formula of the Interstate Commerce Commission they would be doing the same as we are, relatively, because we are following the regulations of the Board of Transport Commissioners, but the P.G.E. is not under the Board of Transport Commissioner's rules because it is a provincial railway.

Senator HAIG: Here is something I can't understand. You always keep coming back for more money.

Mr. GORDON: You are confusing that. We are not coming back for more money. We are only asking for authority to borrow money. We are coming here with our capital budget.

Senator HAIG: That is money.

Mr. GORDON: No, that is not money. That is an earning investment.

Senator HAIG: If the investment does not pay any more money than the present situation indicates, then it is not an investment.

Mr. GORDON: There is no business in the world operating that does not have to find a capital sum of money to keep the plant going, and what we are doing here with this capital budget we are putting before you is buying equipment or renewing our line or whatnot, part of which is made up out of our depreciation and part of which represents new financing. Perhaps I am giving hostages to fortune when I make this remark but I do say that I hope to live long enough—and that won't be very long—to be able to finance the C.N.R. out of its depreciation earnings and the contribution in the form of preferred stock. The picture is that in the last ten years we have had terrific capital budgets because of the complete rehabilitation of the railway following the war, plus the technological change in the form of dieselization. We have spent

over \$400 million alone in dieselizing this plant. Now, in this transition period, and that is what we are in, it is too much to expect that the railway can throw off enough earnings to provide for the interest charges in light of the fact we have had to borrow so much money to take care of this massive rehabilitation. But when we start to get the earning benefit of that rehabilitation we should be able to get along and show a surplus. That, of course, is conditional, as I said before, on the relativity of our charges, of our being able to obtain prices for our services, namely freight rates, to keep pace with the increase in wages and in the price of materials. But we have not been able to do that in the past ten years.

Senator EULER: Mr. Gordon, you have made these very heavy expenditures by way of dieselization, the purchase of other equipment, and so on. You do not expect that level of expenditure to continue in the years following?

Mr. GORDON: No. We have now finished dieselization; this year marks the first time that the Canadian National has been fully dieselized, and we have a modern well equipped railway in every possible way. The only other major capital expense that we have in the transition period is in regard to our yards.

When we embarked on rehabilitation of the railway, including dieselization, there were a great many collateral capital expenses that had to go along with it to get the maximum benefit from dieselization itself. There was no point in our getting improved motive power from dieselization, unless, for example, we were able to extend our passing tracks so that we could handle trains of from 100 to 120 cars, which diesel operation can do. Therefore, we had to embark on a program of enlarging our passing tracks. The same is true of signalling: we had to go into a modern method of signalling, not only to keep ourselves up to date, but to take advantage of the faster and better operation of diesel.

Senator EULER: The point I want to make is that you expect these heavy expenditures are now past. You expect they will pay for themselves, and you do not expect to have to meet similar costs in the coming years?

Mr. GORDON: I don't see it, unless there are massive technological changes. If somebody comes up with a new type of motive power that will displace the diesel—and I most certainly would not want to see it—but if somebody does that, and if we are going to keep modern, we will have to do it. But I don't see it in the cards.

I referred also to the fact that we are currently involved in a very large capital expenditure having to do with the rehabilitation of our yards. When I use the word "rehabilitation" I want you to remember that that does not all come about by the current requirements due to dieselization. We had a legacy from the past, represented by the physical exhaustion of the railway during the war.

When I came into the C.N.R. in 1950—God bless me, I am now eleven years older—the railway was in need of a massive rehabilitation program, quite apart from dieselization. That was because of the fact that during the war they had not been able to get supplies, rails, steel or equipment of any kind, and they had to resort to improvisations, which resulted in a very serious exhaustion of the physical capacity of the railway. Many hundreds of millions of dollars have gone into the railway in the past 10 years to replace this exhausted capacity. That was really a legacy of the war.

Senator ISNOR: Mr. Gordon, during those past 11 years you have made certain statements. As I remember, you made about the same statement in 1951 as you are making now: you hoped that the refunding process, as mentioned by Senator Haig, would enable you to show a surplus. That is as I recall it.

Mr. GORDON: Yes.

Senator ISNOR: You had a deficit in 1951 of \$15 million. That was followed by a small surplus in the next two years. But you have only had two surpluses since that time.

Mr. GORDON: Yes.

Senator ISNOR: Your deficits since have been substantial, running anywhere from \$29 million to \$51 million per year. What do you feel has been the saving by reason of your change-over from the steam locomotive to diesels?

Mr. GORDON: That is a figure which is very difficult to analyze, but I did take a stab at it in the other committee. I said that we could trace direct savings in the operation from diesels to the tune of \$100 million.

Senator ISNOR: Over how many years?

Mr. GORDON: It depends on what you are comparing. If you are comparing last year with 1952, for example, that would be about the size of it. But I do wish to make a comment on your first statement, because this has been repeated to me many times, as to what I said in 1952.

By the purest coincidence I have a copy of what I said in 1952, and I would like to read it. I was asked a question by Senator Roebuck in the Banking and Commerce committee of the Senate. He asked me generally the same question, and I shall read it to you:

Mr. Gordon, you have stated that in your opinion the railway, as a result of this adjustment which is contained in the bill, will be able to pay the operating costs, its fixed charges, its income tax, and leave something over for the preferred shares. I would like to know the basis upon which you make such a prognostication. You do not come here as a prophet, and I would like to know if there are any qualifications you have of that statement.

My reply at that time was a very careful one, because again, by coincidence, I had expected the question. My answer was:

Yes. My statement is, of course essentially a matter of judgment, but our appraisal was based on our experience of the past, and—

Note this:

—assuming the same order of relativity between freight rates on the one hand, and wages and prices on the other—that is to assume that we will have freight rate increases commensurate with the impact of costs of our operation.

That was the qualification. And in point of fact what has happened is that the order of relativity has not been maintained, and our labour and material cost increases have been substantially greater than the increase of average revenue per ton mile which we receive. That is the yardstick of the price we get for our services. If you look at the labour and material increases you will see that they have advanced at a rate of more than twice as much as the freight rate revenue increases.

Senator ISNOR: Your freight rate revenue per mile last year was the largest you have ever had, is that right?

Mr. GORDON: I do not have that figure in mind, but I quite agree it would be. But that does not give the whole answer; that is only in terms of the average. You have to analyze it in terms of the mix of traffic to see what yield it would give. The proper measure is our average revenue per ton mile. And as I say, our average revenue per ton mile has increased at a rate which is half or less than half of our increases in labour and material costs.

At page 39 of the annual report, which I assume you have before you—

Senator ISNOR: I have it.

Mr. GORDON: That shows the table of the figures. For instance, under freight revenue per ton mile, in 1952, which is the year we are talking about, the figure was 1.397; in 1959 it was 1.61. As you see, that is a substantially higher figure. But if you take the average hourly earnings per employee in 1952, you will see it is 1.42 as compared with 1.90 in 1959. That average has gone up from 1.42 to 1.90, which is about 34 per cent, or something of that order, as compared with about 15 per cent increase in the per ton mile rate.

Senator BRUNT: Mr. Gordon, can you tell us the percentage increase in freight rates from 1952 up to the present time, roughly?

Mr. GORDON: Again, it is difficult to answer that question because there are so many different answers to it. There is the theoretical increase, which is the actual freight rate increase authorized but which of course we can't get. I have a table here which shows in 1952 the maximum permissive level of freight rates as authorized under the authority of the board. I am taking as the base figure the index for 1935-39 as 100. Taking that as the base, by 1952 the maximum permissive increase was 169.9. By 1959 that had become 257.3. Now remember, and this is most important, that that is a purely theoretical figure. Now let me give you what I call the effective increase, that is the increase we were able to get actually after we had allowed for competitive traffic and so forth: On the same base the 1952 figure was 143.8, and the 1959 figure, 186.1 which shows the erosion of our ability, so to speak, to exact permissive freight rate increases.

Senator BRUNT: Of course you had to meet competition outside of your own railway.

Mr. GORDON: That is right.

Senator ISNOR: I wonder if you would repeat again so that we would have a clear picture of what brought about the difference. Your freight rate increase was 9 or 10 per cent in the one case, and labour increase was 35 per cent.

Mr. GORDON: It was about 15 per cent in the case of our average ton mile earnings, and about 34 per cent in connection with labour.

Senator Haig, I want to be sure to answer your question because while I directed your attention to the balance sheet and I have told you that that is the total investment made by Canada in the C.N.R. I do want to make it clear that there have been write-off of income deficits, that is of different years' deficits stemming back to 1923.

Senator HAIG: You did not pay any corporation tax?

Mr. GORDON: No. We are now subject to income tax but we have write-back provisions to make use of in case of losses.

To complete the record I would like to put this on it: Subject to a very small margin of error it shows this, that in the 1937 capital revision act there was a total of \$904.6 million of accumulated deficits up to that point that was written off by that Act. In other words we did not capitalize the deficits—there was no point in doing that. And the net deficits which have been written off since 1937 to 1959 are \$276,264,000—that has been the results of operations in the form of deficits. When you get those figures you have the whole story. Another way to get at it, Senator Haig, is through the public accounts, and I am touching now on your suggestion that there has not been disclosure, but if I may say so there has been full disclosure, so long as people know where to look—that is the difficulty, where to look. I am trying to show you now where to look. You can get into the public accounts.

Senator HAIG: Yes, but I cannot get the corporation tax in the public accounts.

Mr. GORDON: We have paid no income tax so far because we have always been in such a deficit position that that situation did not arise. In addition we have been able to take advantage of the Income Tax legislation provisions of writing back or forward any surpluses on which we would be liable to pay income tax.

Senator ISNOR: Would you inform us about the advantages of the railway being able to sell preferred stock to the minister?

Mr. GORDON: I am glad you asked that question, Senator Isnor, because I think there has been a certain amount of misunderstanding in that. The arrangement in regard to the purchase of preferred stock arose within the Capital Revision act of 1952 and at that time there was an agreement made in the legislation to the effect that the Minister of Finance stood ready to buy from the railway in the form of preferred stock a total of 3 per cent of the gross revenues for the year. Now that was intended to be a yardstick in respect to how much equity capital the owner of the property should really put in each year. It was a figure that was estimated and has not been adequate, as you can see, but nevertheless the Minister of Finance by legislation is obligated to purchase preferred stock to the tune of 3 per cent of the gross revenues for the year, and that is automatic. That represents an equity investment in the property that is automatic.

Senator ISNOR: What you say is that the minister is obligated to buy 3 per cent of your gross revenues in preferred stock?

Mr. GORDON: Yes. If you take the gross revenues of the last year, which was roughly \$740 million, you will see the amount of preferred stock that the minister bought under the provisions of the legislation. I want to stress that that is not a market transaction nor is it a matter of choice—it is a matter of the legislation.

The CHAIRMAN: The statute says “shall”?

Senator BRUNT: It is imperative. Have you in your annual report any table showing these purchases of preferred stock over the years?

Mr. GORDON: Not a table, but in each year you will find that we do show the difference between each year. If you turn to page 35 of the annual report you will see the effect of the transactions each year, and that gives a detailed breakdown of exactly what our railway is doing with the Government in the matter of financing. You will find there, “Shareholders’ Equity, Government of Canada, issue of 4 per cent preferred stock of Canadian National Railway Company, \$22,168,692.” This table is one I suggest honourable senators would find most interesting each year because it gives a detailed analysis year by year of our financial transactions both with the Government and in regard to any public financing we might do.

Senator EULER: Do you pay interest on that preferred stock?

Mr. GORDON: Only if earned.

Senator BRUNT: It is not cumulative?

Mr. GORDON: No, it is not cumulative.

Senator ISNOR: That, I take it, is the advantage of selling preferred stock to the Government, adding to their deficit, in preference to placing it on the public market.

The CHAIRMAN: It is not a deficit, it is preferred stock, and that is an investment.

Senator ISNOR: It is a very poor investment if you are not being paid any interest on it.

Mr. GORDON: I come back to that point because I think that point comes up again and again. You must remember that you are talking in terms of a proprietor. The Dominion of Canada is the owner of the Canadian National Railways. Any of you who have made the money that I assume you have in various businesses know that in order to make an industry thrive you must put capital into that industry. There are two ways of putting capital into an industry, one is in the form of equity stock and another may be in various methods of borrowing whether by bonds, debentures or mortgages. The equity stock you put in as a proprietor will be based on your speculative appreciation of what that business will earn after it has paid off all interest charges and so forth, and it is out of earnings left over after paying all charges that you declare your dividend, and your dividend is the return on your stock whether it be preferred, common or otherwise.

Now, in the present instance we are going through a transitional period, as I say, where by reason of heavy capital investments we are not earning enough currently to pay a dividend on that investment, but it should not be regarded for one moment that that investment is lost. The investment is a rue asset in the form of the Canadian National Railways and it may return money some day, and even if it did not return money it has, as I suggest to you, produced a tremendous dividend already in the form of service by reason of the existence of the Canadian National Railways. I venture to say, and in fact I say it dogmatically that Canada is being serviced far better with railway services than it otherwise would be.

Senator ISNOR: That is right.

Mr. GORDON: We have developed research programs, we have put in all sorts of action which improved services and what we do others have to do if they are going to be competitive. So Canada as a whole is not losing by reason of this investment in the Canadian National Railways. That fact tends to get obscured because too many people fix their eyes on that red ink figure, but that is not the story.

Senator ISNOR: I am in accord with that, that it is a good investment so far as the country is being served—I think it is a good investment from that point of view, but on the other hand, so far as the dollar return, that remains to be seen, but as long as you stay as president, you are hopeful and perhaps you will bring it to that position where it will show a return on the investment.

Mr. GORDON: You might do far better with another president and I would be the last one to suggest you would not, and I can tell you this, that I have often thought that there must be an easier way of making a living. I often thought that.

Senator BRUNT: How far have you got along with centralized traffic control installation?

Mr. GORDON: Well, we have a program which is intended to stretch over about eight to ten years and which means that we are trying to do it gradually. When we started there was felt, 44 sub-divisions all across Canada that should be signalled by centralized traffic control. It is a very large and expensive program and therefore we decided to do it gradually. What we are trying to do within the limits of our capital budget, is to begin the installation on four to five subdivisions a year which will take us about eight to nine years to complete; in checking with Mr. Hunt, our budget conscience, as I call him, and he tells me that the the programme is about a third completed.

Senator BRUNT: Does it help to eliminate any of your double track system when you put it in?

Mr. GORDON: Yes, it does, but more important, it obviates the need for it, and of course, speeds up our operations. There is also a very definite safety factor, and from the purely operational aspect it enables the railway to speed up traffic very materially.

Senator BRUNT: In other words, to get maximum efficiency out of the present track?

Mr. GORDON: Yes, in relation to our present equipment.

Senator EULER: Mr. Gordon, would you like to express an opinion as to the prospects of the financial success of the T.C.A.?

Mr. GORDON: I wouldn't like to express that opinion. I think the president of the corporation is the proper person to express it. However, since you ask me my personal opinion, and not as an official opinion, I would say—

Senator EULER: I ask you, because it is in the estimates.

Mr. GORDON: Yes, in the capital budget only, but in respect to the overall—I am probably going to be indiscreet here, Mr. Chairman, and I think I had better not. The question means a forecast about competitive conditions, and all that sort of thing, which I do not think I should make; if you will forgive me, I would rather not.

Senator LAMBERT: I should like to mention one point, the problem of obsolescence as applied to the airways and to all that is owned not only by the T.C.A. but others as well, which constitutes a pretty uninviting consideration for the financing of deficits, I should think.

Mr. GORDON: It is a very vital point, and of course you have to keep in mind this matter of perspective. It is true that the obsolescence of aircraft has been very rapid because of the rapid advance in technology. But each new plane that has come forward has produced an earning capacity substantially in excess of the other, and it is a question now as to whether the airplane industry has reached the stage where there ought to be a sort of a breathing spell, and that the present type of jet plane, for example, should have an operating period of sufficient length in order to have their earnings justify further research work. Now, I cannot tell you whether the period has been reached or not. All I can say is that most people in industry do hope the day has been reached.

Senator LAMBERT: In the meantime the current earnings of the T.C.A. are hardly sufficient to lighten the problems of deficit of the C.N.R., and so on?

Mr. GORDON: Well, the earnings of T.C.A. so far have been sufficient to take care of obsolescence and an intelligent depreciation programme; but on the question of forecasts, I am not prepared to do that because it would mean getting into very definite questions of competition, et cetera, which I am not prepared to do.

Senator LAMBERT: Comparatively is there an aviation or airplane corporation in the whole of America that is producing revenue?

Mr. GORDON: Well, again, that is a matter of definition. One would need to know their depreciation policy to answer that question, and I am afraid I am not sufficiently well informed to do so.

Senator LAMBERT: Well, I suppose they would make so much net profit?

Mr. GORDON: The short answer, I suppose, is that they are not all broke.

Senator REID: Can you say if the T.C.A. are contemplating cargo planes to carry extra cargo across the country, and if so what effect would that have on the C.N.R.?

Mr. GORDON: Well, the T.C.A. naturally will be keeping itself fully up to date in all developments in the air industry, and to the extent that cargo carrying is a practical possibility they will certainly be in on any

developments that would be to their economic advantage. At this moment, personally I do not see that the amount of cargo possible to be carried by air would have a material effect on the railway loadings. It will, however, have a sensitive effect by reason of the fact that by definition the cargo that they would handle would be of high value; but the volume in terms of tonnage would probably not be great.

Senator KINLEY: Would you like to make some comments on Canadian National Steamships?

Mr. GORDON: No.

The CHAIRMAN: That is a short answer.

Senator KINLEY: It is the sort of thing that people don't quite understand, or perhaps think is not good for Canada, I don't know. It seems to me we should have some information.

Mr. GORDON: There is no Canadian National Steamships as such now. It has been wound up and completely liquidated.

Senator KINLEY: Well, that is information right there. And the ships have been sold?

Mr. GORDON: Well, I mean, the corporate entity is still in existence because there are certain liabilities to be cleaned up, but as a functioning operating company it is no more, and it is no longer in our hands; we have even transferred the ownership of the corporate company and all its assets to the Department of Transport, and for example I am no more president of the company,—it is gone.

Senator KINLEY: Have the ships been sold?

Mr. GORDON: The ships have been sold, yes.

Senator KINLEY: Paid for?

Mr. GORDON: They are being paid for. They are sold on an agreement sale covered over five years and in effect it is a liability of the Cuban Government, but I am glad to say that on that liability, by some strange prudence on my part, we have a guarantee of the Bank of America for the payments, and all current payments are up to date.

The CHAIRMAN: Any further questions? Shall I report the bill without any amendment?

Senator ISNOR: No. We are dealing with the credits, are we not?

The CHAIRMAN: Do you want some detail?

Senator ISNOR: I think it would be helpful.

The CHAIRMAN: Have you any particular questions, Senator, you would like to ask?

Senator KINLEY: I think information as to transportation by dayliners in different parts of the country would be useful. I know they have them in Nova Scotia, and in other parts. Is that considered an advancement?

Mr. TASCHEREAU: I would prefer that Mr. Gordon answer that.

The CHAIRMAN: Whether they represent an advance in service or otherwise.

Mr. GORDON: The railiners are a development of a technique where, by reason of a self-propelled car we are able to establish a service in places where otherwise we could not justify the costs of conventional train operations. We have put them in places for the purpose of cutting down our railway operating costs and still providing service where some service is justified.

Senator BRUNT: What crew do you have on the day-liners?

Mr. GORDON: It depends again on whether we run them in sequence, or not. Sometimes we run them in tandem and that makes a difference. If it is a single rail-liner there is a conductor and an engineer. There is, an operator, if you want to call him that, and a conductor-trainman.

Senator BRUNT: Two men?

Mr. GORDON: Yes.

Senator BRUNT: And it takes the place of a regular passenger train?

Mr. GORDON: Yes.

Senator KINLEY: For short distances

Mr. GORDON: No, not in all cases. They are capable of making long hauls.

Senator KINLEY: From Halifax to Sydney?

Mr. GORDON: Yes, they could run 400 or 500 miles easily.

Senator ISNOR: There is one from Truro to Sydney which was—

Mr. GORDON: Yes, it is one of our runs.

Senator KINLEY: I understand the C.P.R. finds it very good from Yarmouth to Halifax.

Mr. GORDON: Yes, and they have one from Montreal to Ottawa, of course.

Senator KINLEY: There is not one from Halifax along the shore—

Mr. GORDON: We made an economic analysis of that run, and it could not be justified.

Senator KINLEY: You had a sample run?

Mr. GORDON: That is right, and we also made an analysis of the possible passenger carryings, and it did not work out.

Senator KINLEY: Did you go to Yarmouth or just to Shelburne?

Mr. VAUGHAN: We looked at the whole area from Halifax to various points, but the roads and the bus service were so good that we could not effectively compete. As a matter of fact, I think the Acadia Bus Line tried an express service from Halifax to Yarmouth, and decided that that in itself was not economic.

The CHAIRMAN: Are there any further questions?

Senator ISNOR: I think I have the same question in mind as was asked by Senator Kinley. There are quite a few of them along the southwestern shore, and people were more or less under the impression two years ago that it was promised they would have a day-liner, and it would almost appear from the point of view which was expressed a little while ago that for the good of the country at large and the nation that a service should be provided from Halifax to Yarmouth on the southwestern line.

The CHAIRMAN: I am sure Mr. Gordon has made a note of it.

Mr. GORDON: Yes, I will make a further note of it, but I do want to say this with respect to this question of service. We are anxious and willing to provide service where it can support itself. We very often have representations made to us to the effect that it would be nice to have a service at a certain place, but when you look at the roads and the bus service provided and from the competition you see that we would not get the passengers even if we did provide a service.

Senator REID: May I ask you how successful the family plan that was put into effect is?

Mr. GORDON: The one we introduced about a year ago?

Senator REID: Yes.

Mr. GORDON: It has been moderately successful. The difficulty in measuring its success is that we have nothing to measure it against. It starts from scratch. The opinion of our passenger people, however, is that it has kept on the railway, traffic that would otherwise have gone. It has had a real influence in terms of numbers, but, there are two factors to be considered. One is that the revenue obtained from the plan is not showing very much increase because we reduced the prices in order to get the volume, so it is a tweedledee and tweedledum sort of thing as to what it means. As I say, our passenger people still retain enthusiasm for it, and we will know better as it gets popularized and better understood.

Senator EULER: Mr. Chairman, when the debate ended the other day in the Senate the matter of level crossings was discussed. I wonder what the policy of the railways is in regard to those. I suppose they would like to eliminate them as fast as they can, but it is also a matter of expense. We were discussing the proportion that was being paid by the various organizations that are affected. The railways pay a certain percentage, the federal Government pays a proportion, although it is very small, and then the municipalities pay something.

I suppose I have in mind particularly local conditions, the same as my friends from Nova Scotia had. We have a level crossing in the very heart of the twin cities of Kitchener and Waterloo. It is a terrific nuisance and it continues to be. The cost of putting a subway there is increasing every year, and I was wondering whether you could give us any information in regard to that.

While speaking on this matter I would like to refer to two other crossings that I have noticed while motoring. The two railways run within almost 150 feet of each other just this side of Cobourg, and one has a subway—I do not know which one it is—and the other has a level crossing within 100 feet of that subway. It seems to me that there is a terrific danger there of people in going under the subway thinking that they have crossed the railway and then immediately they are confronted with a level crossing, and I would think that could be very dangerous. Can you give me any information in regard to that?

Mr. GORDON: I cannot answer these specific cases, but I can tell you what the problem is. You see, first of all, most of these level crossing danger spots have been brought to the railways. What I mean by that is that the railway was there first, and cities have grown up and they have brought on the danger with their growth. Roads have come along, and they have brought the danger to the railways.

Now, any person who is at interest, be it the municipality or any other group which has an interest in eliminating the level crossing for any reason whatever—and it is usually one of safety—may make application to the Board of Transport Commissioners. They administer what is called the grade crossing fund. The Board of Transport Commissioners will hold a hearing and form a judgment in relation to the evidence adduced as to whether or not there should be a separation of the grade, as we call it, and at that time they will apportion the cost on the basis of what is chargeable to the grade crossing fund, what is chargeable to the railway, and what is chargeable to the municipality.

Senator EULER: Is there any formula in regard to that?

Mr. GORDON: Yes, there has been a formula of a kind. It is not absolutely rigid, but generally speaking 80 per cent of the cost will be paid by the grade crossing fund—it varies in some cases—15 per cent will be paid by the highway authority or the municipality, as the case may be—it might be the trans-Canada highway for instance—and 5 per cent will be paid by the railways. That will depend on whether or not the railway is, what we call, senior. If we

were there first we argue we should not pay the major part of the cost, but if we go in there after the roadway has been built then we would probably be required to pay substantially more.

Senator EULER: And the decision on that is made by the Board of Transport Commissioners?

Mr. GORDON: Yes, sir.

Senator WALL: I have a very minor question, but it has been put to me many times as I travel on both trans-continental lines. People make comments about the difference in the level of comfort or amenities, or whichever word you want to use. I do not want to enter into specifics, but I travel on the crack Trans-Continental trains of both lines, and I find that people are wondering whether anything is going to be done to upgrade, if I may put it that way, the amenities on the C.N.R. trains.

Mr. GORDON: Is the suggestion that the quality of the C.N.R. trains is not better than that of the others?

Senator WALL: Well, there are amenities on the other trains such as...

Mr. GORDON: Well, dome cars and music.

Senator WALL: Yes. For example, even in the lounges there are short-backed chairs, and in the bedrooms, upon which you cannot relax.

Mr. GORDON: It depends on when and where the comparison has been made. I can take you into cars of our competitors that would not compare with ours.

Senator WALL: I am talking about the trans-continental trains, with which I am familiar.

Mr. GORDON: I am prepared to say that our Super Continental, taking that as our topnotch service, compares favourably in every way, in terms of comfort and provision of service, with any other. We have not matched the C.P.R. in respect of dome cars and music, and I have given the reason for that many times, but in terms of the fundamental comfort of our trains and the services available, I think our Super Continental will match any.

Senator WALL: I would buy most of that but not the fact that your chairs are totally different.

The CHAIRMAN: That is neither here nor there. We have had an answer.

Senator REID: I think you could take the music out of the trains. I have travelled perhaps more than any member of Parliament...

Mr. GORDON: I am sure they don't play the right kind of music for you! I am in sympathy with you.

Senator REID: ...and I have seen more rows with passengers because of the kind of musical programs being played.

Senator KINLEY: I think the Ocean Limited to the Maritimes is one of the best trains in Canada. I travel it once a month.

Mr. GORDON: You say it is a fine train?

Senator KINLEY: Yes.

Mr. GORDON: I would say further that if you really want to appreciate the quality of passenger service in Canada by both railways you should visit some other countries and then you will see what you are getting.

The CHAIRMAN: You are so right.

Senator KINLEY: You are in the small loan business, and that is a live question today.

Mr. GORDON: In the small loan business? I think I understand, "Go now and pay later".

Senator KINLEY: Yes, "Travel now and pay later". As a financial man you would have very fixed opinions on that.

Mr. GORDON: I do, and I can assure you that the C.N.R. takes absolutely no financial risk in that plan. It is underwritten by the chartered banks which make loans and they are responsible for all losses. We do not take any risk at all. The interest and the carrying charges are paid to the banks. We merely introduce the party, and that is all.

Senator BRUNT: In connection with the level crossings can the railroads initiate proceedings before the Board to eliminate a crossing?

Mr. GORDON: Yes, any interested party can. It is a fact there are certain occasions on which the railway becomes aware of a dangerous condition first. I would like to see us do more of that myself and we would do more of it if it did not engage us always in a financial penalty.

Senator BRUNT: Thank you.

The CHAIRMAN: Are you ready for the question?

Senator ISNOR: I have one or two questions I should like to ask. May I say to Senator Wall that if he wants solid comfort in travel he should take the Ocean Limited from Montreal to Halifax. He will get it.

Mr. GORDON: Thank you.

Senator BRUNT: I am glad to hear that the Maritimes are looked after.

Senator ISNOR: To follow up my statement that we have good service on the Ocean Limited, may I say we are not satisfied with the equipment and service on the Maritime Express. I merely wish to throw out a constructive thought, Mr. Gordon. Perhaps it is unwise for me to do so in the manner in which I propose doing it, but it has been suggested that if you were to improve the equipment on No. 59 or No. 3 from Halifax to Montreal, doing away with one or the other, you might be able to improve your all-over service generally, provided you did not eliminate any further men from your employment.

Mr. GORDON: You are thinking of types of equipment such as sleeping cars, coaches, et cetera?

Senator ISNOR: I am thinking of that equipment, yes.

Mr. GORDON: In that respect I am depending on the good advice I get from my very capable officials located in the Maritime provinces. We have a train committee there and the officers on that committee are responsible to observe and to travel on the trains and see what the public wants, and on the basis of their observations they make recommendations as to the consist of the train. You should remember that to provide a sleeping car as compared with a coach you are talking about a capital investment of about \$250,000 for a sleeping coach as against about \$120,000 for a coach. If we can use the coach and meet, let us say, 90 per cent of the demand then that is the proper thing to do. But, as I say, the question as to what is the intelligent consist of the train is a matter which is under the jurisdiction of our local officials who travel the trains and form a judgment as to the character of the traffic.

Senator ISNOR: You may recall that I raised the question of traffic at one of our previous meetings and you doubted as to whether I was correct, but you were good enough later on to advise me by letter that I was quite correct with respect to the traffic in connection with the Ocean Limited.

Mr. GORDON: There is nothing I enjoy more than admitting when I am wrong, senator.

Senator ISNOR: I am going to suggest to you that you look further into the question from a return point of view and see whether it would not pay you to increase your enclosures—is that the proper term?

Mr. GORDON: Enclosed space.

Senator ISNOR: On either the Maritime Express or the Scotian. The Ocean Limited is all right.

Mr. GORDON: I will be glad to oblige.

Senator ISNOR: At the same time I think I should bring to your attention that we were very disappointed, because of the unemployment situation in Halifax, when you found it necessary to transfer twelve employees from Halifax to Montreal.

The CHAIRMAN: Any other questions?

Senator ISNOR: I think Mr. Vaughan has a comment to make.

The CHAIRMAN: I did not gather you had put a question, Senator Isnor.

Senator ISNOR: Is there any likelihood of that being restored?

Mr. GORDON: No.

The CHAIRMAN: Any other question?

Senator KINLEY: You are making a great improvement in the Nova Scotian Hotel in Halifax.

Mr. GORDON: Under the greatest of difficulties, I might say quite bitterly.

Senator KINLEY: Labour difficulties?

Mr. GORDON: Labour difficulties that tied us up and did a bad public relations job for all of Nova Scotia. The hotel will not be finished this season and we are meeting an emergency situation by providing sleeping cars for people attending conventions, people coming from the United States. It has given a black eye to the tourist traffic industry of Nova Scotia which will last for a long time. It is a very unfortunate situation and there was no justification for it. Our contractors were paying the wages demanded and, notwithstanding that, they struck against us in order to exert leverage against other people.

The CHAIRMAN: Shall section 2 carry?

Senator BEAUBIEN: May I ask one question? I see an item in this bill for \$3,315,000 for hotels. May I make the comment, Mr. Gordon, that in some of your hotels some of the furniture is so old that it is almost obsolete.

Mr. GORDON: That may well be but when you get down to the hard economic fact as to what money we can make out of our capital investment, I say quite frankly we are only spending capital where we see a return for it. We have been doing a gradual cleanup job in all these hotels every year, spending so much money in improving things but we are not doing a blitz job, so to speak, on it.

Senator BEAUBIEN: I am referring mostly to the furniture. A lot of it has been in the hotels since they were built.

Mr. GORDON: You might know, of course, that there is a very high market value for antiques as compared with new furniture.

Senator BEAUBIEN: Some of the antiques you have in some of your hotels, I don't know where you get any value for them.

The CHAIRMAN: Shall section 2 carry?

Carried.

The CHAIRMAN: Section 3?

Senator ISNOR: I was going to ask in connection with the working capital and the Victoria Bridge, does the St. Lawrence Seaway Authority pay any portion of that?

Mr. GORDON: Not yet but there is an agreement in existence between the St. Lawrence Seaway Authority and the C.N.R. which is that the C.N.R. would proceed with the diversionary bridge which is necessary in order to make certain that traffic is not interrupted either on the waterway, the railway or on the roadway.

When the work is completed the division of cost will be arbitrated by the Minister of Transport.

Senator ISNOR: By the Minister of Transport?

Mr. GORDON: Yes. That means the Governor in Council.

The CHAIRMAN: Shall section 3 pass?

Senator ISNOR: They were responsible for your having to make this expenditure.

Mr. GORDON: That is our attitude. I said in the other committee that we have every legal and moral right to get back every penny we put into that diversion, and we intend to assert that position with everything we can.

Senator ISNOR: To make the St. Lawrence Seaway pay for it.

Mr. GORDON: Yes. And I would like to have it on the record that the committee endorses that position.

Some Hon. SENATORS: Hear, hear.

The CHAIRMAN: It is on the record now!

—Sections 4, 5, 6, 7, 8, 9 and 10—carried.

The CHAIRMAN: Section 11 is an indirect way of amending the capital revision statute, by putting it in this bill rather than bringing in an amendment to the statute.

Mr. GORDON: Is it so indirect? It is only a means of synchronizing the dates.

—Sections 11 and 12 carried, and bill reported without amendment.

Senator EULER: Mr. Chairman, Mr. Gordon, the President of the Canadian National Railways does not often receive bouquets when he appears before various committees. Speaking for myself I should like to compliment him on the way he has presented the budget and for the clear manner in which he has answered our questions.

The CHAIRMAN: I think we should include Mr. Taschereau in that commendation. He too gave an excellent presentation.

Hon. SENATORS: Hear, hear.

—Whereupon the committee adjourned.

CANADIAN NATIONAL RAILWAYS

CAPITAL BUDGET

AND

ESTIMATED INCOME ACCOUNT

YEAR 1960

February 4, 1960.

CANADIAN NATIONAL RAILWAYS

INDEX

PAGE

- 31 Summary
- 32 Financing Authority
Commitment Authority
Existing Financing Authority
- 33 Summary—Road Property by Areas
- 34 Branch Lines
Hotels
- 35 New Equipment
Investment in Affiliated Companies
- 36 Refundings
Operating Budget

CANADIAN NATIONAL RAILWAYS

CAPITAL BUDGET—YEAR 1960

| | 1960 Proposals | Cost to Complete Projects Authorized in Prior Years | Total | 1960 Expendi- tures | 1959 Budget: |
|--|-------------------|--|---------|---------------------------|-----------------|
| | (000) | (000) | (000) | (000) | (000) |
| ROAD PROPERTY | | | | | |
| New Lines, Diversions and Abandonments..... | 41,327 | 9,135 | 50,462 | 11,862 | 8,567 |
| Roadway Improvements..... | 51,817 | 2,251 | 54,068 | 52,841 | 62,802 |
| Large Terminals..... | 38,540 | 39,192 | 77,732 | 25,931 | 27,034 |
| Yard Tracks and Sidings..... | 1,189 | 2,248 | 3,437 | 1,822 | 2,948 |
| Buildings..... | 5,049 | 23,753 | 28,802 | 21,123 | 20,446 |
| Highway Crossing Protection..... | 297 | ..... | 297 | 297 | 736 |
| Signals..... | 4,632 | 6,834 | 11,466 | 6,083 | 7,073 |
| Roadway and Shop Machinery..... | 3,477 | 2,426 | 5,903 | 4,306 | 3,827 |
| General..... | 17,685 | 5,669 | 23,354 | 19,909 | 20,601 |
| Communications..... | 9,890 | 32,682 | 42,572 | 26,033 | 18,261 |
| Road Property—Total..... | 173,903 | 124,190 | 298,093 | 170,207 | 172,295 |
| BRANCH LINES..... | ..... | 2,812 | 2,812 | 2,259 | 10,141 |
| HOTELS..... | 1,268 | 2,433 | 3,701 | 3,315 | 3,568 |
| EQUIPMENT..... | 22,257 | 35,616 | 57,873 | 34,977 | 88,480 |
| | 197,428 | 165,051 | 362,479 | 210,758 | 274,484 |
| INVESTMENT IN AFFILIATED Co's..... | 1,842 | 5,000 | 6,842 | 6,842 | 17,416 |
| | 199,270 | 170,051 | 369,321 | 217,600 | 291,900 |
| Less—Uncompleted Work..... | ..... | ..... | ..... | 30,000 | 38,000 |
| Total—C.N.R. Capital Budget..... | 199,270 | 170,051 | 369,321 | 187,600 | 253,900 |
| Working Capital..... | 10,000 | ..... | 10,000 | 10,000 | ..... |
| TOTAL—C.N.R. REQUIREMENTS..... | 209,270 | 170,051 | 379,321 | 197,600 | 253,900 |
| NOTE: The amounts required for refunding and/or retirement of maturing securities are shown on Page 36 hereof. | | | | | |
| T.C.A. FINANCIAL REQUIREMENTS | | | | | |
| Presented for inclusion in the Financing and Guarantee Act..... | 82,350 | ..... | 82,350 | 82,350 | 57,000 |
| TOTAL REQUIREMENTS..... | 291,620 | 170,051 | 461,671 | 279,950 | 310,900 |

CANADIAN NATIONAL RAILWAYS

STATEMENT OF FINANCING AUTHORITY REQUIRED WITH RESPECT TO CAPITAL BUDGET

YEAR 1960

(000)

| | | | |
|--|-----------|---------|---------|
| GROSS CAPITAL EXPENDITURES | | | |
| Road Property..... | \$170,207 | | |
| Branch Lines..... | 2,259 | | |
| Hotels..... | 3,315 | | |
| Equipment..... | 34,977 | | |
| | | 210,758 | |
| Investment in Affiliated Companies..... | | 6,842 | |
| | | 216,700 | |
| Less—Uncompleted Work..... | | 30,000 | |
| Total—C.N.R. Capital Budget..... | | | 187,600 |
| WORKING CAPITAL REQUIREMENTS | | | |
| Amount required to finance temporarily alterations to Victoria Bridge to co-ordinate with St. Lawrence Seaway..... | | | 10,000 |
| Total—C.N.R. Requirements..... | | | 197,600 |
| Trans-Canada Air Lines—Financial Requirements..... | | | 82,350 |
| Total—Requirements..... | | | 279,950 |
| ----- | | | |
| SOURCE OF FUNDS | | | |
| Depreciation Accruals, etc..... | 112,000 | | |
| Issue of Securities: | | | |
| Preferred Stock..... | 22,800 | | |
| Additional Borrowing—1960..... | 62,800 | | |
| | | 197,600 | |
| Borrowing—Trans Canada Air Lines..... | | 82,350 | |
| | | | 279,950 |
| ----- | | | |
| JANUARY 1, 1961 TO JUNE 30, 1961 | | | |
| Interim financial authority required with respect to capital expenditures authorized in 1960 and prior years | | | |
| Gross Capital Expenditures: C.N.R..... | 66,000 | | |
| T.C.A..... | 20,000 | | |
| | | | 86,000 |
| Financing thereof: | | | |
| Funds available from depreciation accruals, etc..... | | | 50,000 |
| | | | 36,000 |
| Issue of Securities: | | | |
| Preferred Stock..... | 11,000 | | |
| Additional borrowing—C.N.R..... | 5,000 | | |
| —T.C.A..... | 20,000 | | |
| | | | 36,000 |
| ----- | | | |

COMMITMENT AUTHORITY REQUESTED

Authority is requested to enter into contracts prior to the first day of July 1961 for the acquisition of new equipment and for general additions and conversions that will come in course of payment after the calendar year 1960 in amounts not exceeding in the aggregate..... 51,000

EXISTING FINANCING AUTHORITY

Financing authority exists under CANADIAN NATIONAL FINANCING AND GUARANTEE ACT, 1959, Section 3 (1) (b) for an amount of \$130,000,000. Estimated expenditures against this amount are \$87,000,000 for Road and Equipment and \$43,000,000 for advances to Trans-Canada Air Lines.....

CANADIAN NATIONAL RAILWAYS

SUMMARY OF ROAD PROPERTY CAPITAL BUDGET PROJECTS BY AREAS

Total of 1960 Proposals and Cost to Complete Projects Approved in Prior Years

| | Atlantic Region | | | | | | | Total |
|---|----------------------|-------------------------------|-------------------|-------------------|---------------------------|-------------------------------|------------|-------------|
| | Maritime District | Newfound- land District | Central Region | Western Region | Grand Trunk Western | Central Vermont Railway | Other | |
| | \$ | \$ | \$ | \$ | \$ | \$ | \$ | |
| New Lines, Diversions and Abandonments..... | 310,000 | ..... | 46,019,600 | 4,132,200 | ..... | ..... | ..... | 50,461,800 |
| Roadway Improvements..... | 7,228,900 | 2,652,000 | 13,452,200 | 29,171,000 | 1,476,100 | 87,700 | ..... | 54,067,900 |
| Large Terminals..... | 6,816,700 | 1,790,000 | 48,411,773 | 20,642,000 | 72,000 | ..... | ..... | 77,732,473 |
| Yard Tracks and Sidings..... | 312,200 | 272,400 | 596,700 | 2,201,400 | 45,000 | 10,000 | ..... | 3,437,700 |
| Buildings..... | 395,800 | 744,800 | 22,477,700 | 4,672,000 | 498,400 | 12,500 | ..... | 28,801,200 |
| Highway Crossing Protection..... | ..... | ..... | 203,000 | 52,500 | 11,200 | 30,000 | ..... | 296,700 |
| Signals..... | 2,556,000 | ..... | 3,447,300 | 5,462,700 | ..... | ..... | ..... | 11,466,000 |
| Roadway and Shop Machinery..... | 924,100 | 447,400 | 908,200 | 3,162,600 | 413,400 | 47,100 | ..... | 5,902,800 |
| General..... | 574,500 | 231,800 | 2,828,000 | 2,470,500 | 266,400 | 20,000 | 16,963,400 | 23,354,600 |
| Communications..... | ..... | ..... | ..... | ..... | ..... | ..... | 42,571,971 | 42,571,971 |
| Road Property—Total..... | 19,118,200 | 6,138,400 | 138,344,473 | 71,966,900 | 2,782,500 | 207,300 | 59,535,371 | 298,093,144 |
| Expenditures—1960..... | 16,852,200 | 4,860,900 | 54,167,800 | 51,853,500 | 2,692,800 | 182,300 | 39,597,200 | 170,206,700 |

CANADIAN NATIONAL RAILWAYS

CAPITAL BUDGET—YEAR 1960

Branch Line Construction

Construction of the following new branch lines authorized as follows:

| | Authorization | Mileage | Estimated Expenditures |
|---|------------------|---------|------------------------|
| Terrace—Kitimat..... | Chapter 20, 1952 | 46.0 | 11,500,000 |
| Beattyville—Chibougamau—St. Felicien..... | Chapter 49, 1954 | 297.6 | 40,825,000 |
| Bartibog—Heath Steele Mines..... | Chapter 19, 1956 | 22.0 | 3,220,000 |
| Sipiwek—Thompson..... | Chapter 13, 1957 | 30.0 | 5,400,000 |
| Optic Lake—Chisel Lake..... | Chapter 13, 1957 | 52.0 | 10,165,000 |

| | Authorized Expenditures | | Estimated Expenditures to end of 1959 | Cost to Complete | Expenditures 1960 |
|---|-------------------------|------------|---------------------------------------|------------------|-------------------|
| | Total | Capital | | | |
| Terrace—Kitimat..... | 11,500,000 | 11,500,000 | 10,950,000 | 100,000 | 100,000 |
| Beattyville—Chibougamau—St. Felicien.. | 35,000,000 | 34,930,000 | 34,486,900 | 443,100 | 393,000 |
| Bartibog—Heath Steele Mines..... | 2,800,000 | 2,800,000 | 2,426,000 | 35,000 | 35,000 |
| Sipiwek—Thompson..... | 4,500,000 | 4,500,000 | 4,199,000 | 301,000 | 301,000 |
| Optic Lake—Chisel Lake..... | 10,165,000 | 10,165,000 | 5,516,700 | 1,933,300 | 1,430,000 |
| | 63,965,000 | 63,895,000 | 57,578,600 | 2,812,400 | 2,259,000 |
| Less Subsidy on Beattyville—Chibougamau—St. Felicien..... | 7,360,750 | 7,360,750 | 7,360,750 | ..... | ..... |
| | 56,604,250 | 56,534,250 | 50,217,850 | 2,812,400 | 2,259,000 |

CANADIAN NATIONAL RAILWAYS

CAPITAL BUDGET—YEAR 1960

Hotels

| | 1960 Proposals | Cost to complete projects authorized in prior years | Total | 1960 Expenditures |
|--|----------------|---|-----------|-------------------|
| | \$ | \$ | \$ | \$ |
| "Nova Scotian", Halifax, N.S..... | 141,000 | 2,194,500 | 2,335,500 | 2,335,500 |
| "Chateau Laurier", Ottawa, Ont..... | 347,700 | 92,000 | 439,700 | 280,700 |
| "Fort Garry", Winnipeg, Man..... | ..... | 30,600 | 30,600 | 30,600 |
| "Bessborough", Saskatoon, Sask..... | 94,000 | 116,000 | 210,000 | 210,000 |
| "Macdonald", Edmonton, Alta..... | 128,000 | ..... | 128,000 | 128,000 |
| "Jasper Park Lodge", Jasper, Alta..... | 401,000 | ..... | 401,000 | 174,000 |
| Various Hotels..... | 75,000 | ..... | 75,000 | 75,000 |
| | 1,186,700 | 2,433,100 | 3,619,800 | 3,233,800 |
| "Queen Elizabeth", Montreal, Que..... | 81,000 | ..... | 81,000 | 81,000 |
| | 1,267,700 | 2,433,100 | 3,700,800 | 3,314,800 |

CANADIAN NATIONAL RAILWAYS

CAPITAL BUDGET—YEAR 1960

Equipment

| | 1960 Proposals | Cost to complete projects authorized in prior years | Total | 1960 Expenditures |
|--|-------------------|--|-------------------|----------------------|
| | \$ | \$ | \$ | \$ |
| NEW | | | | |
| Authority is requested for the financing to the extent indicated of the under-noted equipment, the financing and/or ordering of which was authorized in Financing and Guarantee Acts in prior years..... | | 33,507,000 | 33,507,000 | 20,707,000 |
| 140 Locomotives | | | | |
| 9 Passenger Train Cars | | | | |
| 300 Freight Cars | | | | |
| 5 Work Equipment Units | | | | |
| <u>454</u> | | | | |
| Authority is requested for the ordering of equipment estimated to cost \$15,734,000 of which \$5,638,000 will be required to finance anticipated deliveries in 1960..... | 15,734,000 | | 15,734,000 | 5,638,000 |
| 1,366 Freight Cars | | | | |
| 5 Work Equipment Units | | | | |
| <u>1,371</u> | | | | |
| | 15,734,000 | 33,507,000 | 49,241,000 | 26,345,000 |
| ADDITIONS, CONVERSIONS AND HIGHWAY VEHICLES..... | 6,522,600 | 2,109,900 | 8,632,500 | 8,632,500 |
| Total—Equipment..... | <u>22,256,600</u> | <u>35,616,900</u> | <u>57,873,500</u> | <u>34,977,500</u> |

NOTE: The particulars of the equipment required as indicated may be revised as to numbers and classes, but the total cost will not exceed the amount of the authorizations requested above.

CANADIAN NATIONAL RAILWAYS

CAPITAL BUDGET—YEAR 1960

Investment in Affiliated Companies

| | 1960 Budget |
|---|-------------------|
| TORONTO TERMINALS RAILWAY COMPANY | |
| Estimated requirements—\$73,400, C.N.R. proportion—50%..... | 36,700 |
| NORTHERN ALBERTA RAILWAYS | |
| Estimated requirements—\$2,890,610, C.N.R. proportion—50%..... | 1,445,300 |
| CHICAGO AND WESTERN INDIANA RAILROAD | |
| Advances under Agreements March 31, 1926 and May 1, 1952..... | 360,000 |
| CANADIAN NATIONAL TRANSPORTATION, LIMITED..... | 5,000,000 |
| Total—C.N.R..... | <u>6,842,000</u> |
| TRANS-CANADA AIR LINES—FINANCIAL REQUIREMENTS | |
| Advances in respect of Capital Expenditures (Year 1960 only)..... | <u>82,350,000</u> |

STANDING COMMITTEE

CANADIAN NATIONAL RAILWAYS

RETIREMENT OF CAPITAL OBLIGATIONS INCLUDING EQUIPMENT PRINCIPAL PAYMENTS DURING THE YEAR ENDING DECEMBER 31, 1960.

| Due Date 1960 | | Amount |
|------------------|--|------------------|
| Jan. 15 | Canadian National Railways 2½% Equipment Trust Series "V" Certificates.. | 675,000 |
| Mar. 15 | Canadian National Railways 2½% Equipment Trust Series "U" Certificates.. | 1,100,000 |
| May 4 | Canadian Northern Alberta Railway Company 3½% First Mortgage Debenture Stock..... | 550,727* |
| July 15 | Canadian National Railways 2½% Equipment Trust Series "V" Certificates.. | 675,000 |
| | | <u>3,000,727</u> |

*Equivalent to par value of issue outstanding of £113,163 at rate of \$4.86½. Amount to be borrowed will be based on rate of exchange in effect at maturity date.

| BONDS TO BE ACQUIRED FOR PURCHASE FUNDS | | |
|---|--|-------------------|
| Canadian National Railway Company 5½% Bonds, due Dec. 15, 1964..... | | 4,000,000 |
| Canadian National Railway Company 5% Bonds, due May 15, 1968..... | | 2,400,000 |
| Canadian National Railway Company 5% Bonds, due May 15, 1977..... | | 1,800,000 |
| Canadian National Railway Company 5½% Bonds, due Jan. 1, 1985..... | | 2,000,000 |
| | | <u>10,200,000</u> |
| | | <u>13,200,727</u> |
| (Say)..... | | <u>13,201,000</u> |

CANADIAN NATIONAL RAILWAYS

OPERATING BUDGET—YEAR 1960

| | 1960 Budget | 1959 Actual |
|---------------------------------------|------------------|------------------|
| | (000) | (000) |
| <i>Operating Revenues</i> | \$760,000 | \$740,165 |
| <i>Operating Expenses</i> | | |
| Maintenance: | | |
| Road..... | 162,600 | 163,767 |
| Equipment..... | 150,600 | 154,612 |
| Total..... | 313,200 | 318,379 |
| Transportation..... | 318,900 | 322,252 |
| | 632,100 | 640,631 |
| Traffic..... | 15,400 | 15,634 |
| Miscellaneous Railway Operations..... | 6,000 | 6,083 |
| General..... | 57,100 | 58,474 |
| Total..... | 710,600 | 720,822 |
| <i>Net Operating Revenues</i> | 49,400 | 19,343 |
| <i>Taxes and Rents</i> | 20,500 | 21,030 |
| Net Railway Operating Income..... | 28,900 | (1,687) |
| <i>Other Income</i> | 17,800 | 11,018 |
| Available for Fixed Charges..... | 46,700 | 9,331 |
| <i>Fixed Charges</i> | 70,700 | 52,919 |
| <i>Deficit</i> | <u>\$ 24,000</u> | <u>\$ 43,588</u> |

NOTE: The 1960 Operating Forecast is based on 1959 material prices, wage rates and freight rates.

WEDNESDAY, June 22, 1960.

The Standing Committee on Transport and Communications to whom was referred the Bill (C-69), intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System for the period from the 1st day of January, 1960 to the 30th day of June, 1961, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company", have in obedience to the order of reference of June 16, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Acting Chairman.



Third Session—Twenty-fourth Parliament
1960



THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the

Bill C-72, An Act respecting the Construction by the Canadian National Railway Company of certain railway terminal facilities at and in the vicinity of the City of Toronto.

The Honourable A. K. HUGESSEN, Chairman.

WEDNESDAY, July 6th, 1960

WITNESSES:

Mr. Norman MacMillan, Executive Vice President, Canadian National Railways; Mr. J. L. Cann, Project Director, Canadian National Railways.

REPORT OF THE COMMITTEE.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

THE STANDING COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable ADRIAN K. HUGESSEN, *Chairman*

The Honourable Senators

| | | |
|---|------------|--|
| *Aseltine | Gershaw | Molson |
| Baird | Gladstone | Monette |
| Beaubien | Gouin | Paterson |
| Bishop | Grant | Pearson |
| Blois | Haig | Power |
| Bouffard | Hardy | Quinn |
| Bradley | Hayden | Raymond |
| Brunt | Horner | Reid |
| Buchanan | Hugessen | Robertson |
| Campbell | Isnor | Roebuck |
| Connolly (<i>Halifax</i> <i>North</i>) | Jodoin | Smith (<i>Queens-</i> <i>Shelburne</i>) |
| Connolly (<i>Ottawa</i> <i>West</i>) | Kinley | Smith (<i>Kamloops</i>) |
| Courtemanche | Lambert | Stambaugh |
| Dessureault | Lefrançois | Veniot |
| Emerson | *Macdonald | Vien |
| Euler | McGrand | Woodrow—(50) |
| Farris | McKeen | |
| | McLean | |
| | Méthot | |

50 members

(QUORUM 9)

**Ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate.

THURSDAY, June 30th, 1960.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Brunt, seconded by the Honourable Senator Pearson, for second reading of the Bill C-72, intituled: "An Act respecting the Construction by the Canadian National Railway Company of certain railway terminal facilities at and in the vicinity of the City of Toronto".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, July 6th, 1960.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.30 A.M.

Present: The Honourable Senators Hugessen, Chairman; Aseltine, Brunt, Buchanan, Courtemanche, Dessureault, Haig, Hayden, Horner, Isnor, Kinley, Pearson, Stambaugh and Woodrow. 14.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the official reporters of the Senate.

Bill C-72, An Act respecting the Construction by the Canadian National Railway Company of certain railway terminal facilities at and in the vicinity of the City of Toronto, was read and considered clause by clause.

On Motion of the Honourable Senator Hayden, seconded by the Honourable Senator Brunt, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

Heard in explanation of the Bill: Mr. Norman MacMillan, Executive Vice President, Canadian National Railways; Mr. J. L. Cann, Project Director, Canadian National Railways.

In attendance but not heard: Mr. J. D. Hayes, Acting General Superintendent, Canadian National Railways.

It was Resolved to report the Bill without any amendment.

At 1.00 P.M. the Committee adjourned to the call of the Chairman.

ATTEST.

Gerard Lemire,
Clerk of the Committee.

WEDNESDAY, July 6th, 1960.

The Standing Committee on Transport and Communications to whom was referred the Bill (C-72), intituled: "An Act respecting the Construction by the Canadian National Railway Company of certain railway terminal facilities at and in the vicinity of the City of Toronto", have in obedience to the order of reference of June 30th, 1960, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

A. K. HUGESSEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

The Standing Committee on Transport and Communications, to which was referred Bill C-72, an act respecting the construction by the Canadian National Railway Company of certain railway terminal facilities at and in the vicinity of the City of Toronto, met this day at 11.30 a.m.

Senator A. K. HUGESSEN, Chairman, in the Chair.

The CHAIRMAN: Honourable senators, I suggest that we now proceed with our consideration of Bill C-72. The witnesses to appear before us are here in the room, and they are Mr. Norman MacMillan, Executive Vice-President, Canadian National Railways; Mr. J. L. Cann, Project Director, Canadian National Railways; Mr. J. D. Hayes, Acting General Superintendent, Canadian National Railways.

It has been suggested that Mr. MacMillan will make first a general statement giving details of this bill. He has indicated to me he is perfectly happy to have anybody who wants to ask a question stop him during his presentation at any point, although he may have to refer to either of these other gentlemen in order to be able to give a complete reply to any question which any honourable senator desires to ask. Is that a procedure which recommends itself to the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: I will then ask Mr. MacMillan to start his general presentation.

Mr. Norman MacMillan, Executive Vice-President, Canadian National Railways: Mr. Chairman and gentlemen, may I at the outset express the appreciation of the management of the Canadian National for this opportunity to explain the legislation. Mr. Cann, the gentleman in the grey suit, is the individual responsible for the planning and execution of the project. Mr. Hayes, who is on his right, is the Canadian National official most familiar with the problems of the Toronto terminal.

If I may, I would like to make a few observations regarding the bill because I feel in that way I can give you certain information most readily. The legislation is somewhat unusual in form in that it embraces facilities, and authorizes their construction, of a nature which we do not normally ask to be covered by special legislation. I refer particularly to the construction of the yard itself.

The principal Act of Canadian National already contemplates that we may build yards where they are required, but in this particular instance the yard and the access lines are so interwoven that they really must be regarded as a single project, and it became, in our view, desirable to put them together in this legislation so that they can be explained comprehensibly. In addition, the pattern of collecting in one act all those things required at large terminals was first adopted in 1929 when the Montreal terminal legislation was enacted. This legislation is to Toronto what the Montreal legislation was to Montreal.

In the bill you will notice that in section 2 we follow the normal pattern of our branch line statutes, and we embrace here in general language all those

things that are to be done around Toronto. It authorizes the Governor in Council to empower us to proceed. You will notice at one point the words "automatic electronic hump yard" are used, and we will explain to you what is implied by the words "automatic", "electronic" and "hump" in the context. "Hump yard" means, of course, a hump. It is a hill 19 to 22 feet high, and the forces of gravity are used to propel the cars and to sort them.

Section 3 is the same section which we have in all of our legislation recording the principle of competitive bidding.

Section 4 is the authority for the gross cost, and you will notice that the amount is referred to in the schedule. Authority is given to exceed this estimate by 15 per cent, and that again follows the pattern of many prior statutes.

Sections 5 to 8 are the financing sections, and I am certain you will recall that sections of this nature have appeared in all of our branch line statutes, but that we do not use them. We actually utilize the powers of the annual Financing and Guarantee Act to complete the project.

Senator HAYDEN: Mr. MacMillan, what are temporary guarantees as against permanent guarantees?

Mr. MACMILLAN: That presupposes that we can borrow money from an outside agency, for example, one of the chartered banks, and the note would be guaranteed by the Crown. To my knowledge those powers have never been utilized.

Senator HAYDEN: The word "temporary", I take it, applies to the nature of the loan? The guarantee is just as permanent as it can be?

Mr. MACMILLAN: Yes, it is regarding the nature of the loan. It would be a short-term loan.

Senator KINLEY: I suppose you do not get into conflict with the Toronto Harbour Commission in regard to this?

Mr. MACMILLAN: No, we do not.

Section 8 on page 3 is the last of the financing sections, and section 9 has really to be read in conjunction with section 1, and it refers to a master plan that is to be approved by the Governor in Council.

Section 10 is the customary requirement on the railway to report to Parliament on projects being undertaken under statutory authorization.

The schedule, I think, you will find is of more interest. It is on page 4. In detail, the first item has reference to the hump yard and related facilities, and we shall give you more of that in a little while. In the second to last line there is a reference to pull-back tracks, and they are just what those words imply. A pull-back track is the track on which we pull the freight trains back before they are started up over the hump.

Paragraphs 2 and 3 pertain to the access railway lines, which are the means by which we get to the yard. Paragraph 2 is the reference to the access from the east, and paragraph 3 pertains to the access from the west.

Section 3 differs somewhat from Section 2 in that Section 2 appertains to new construction from the main line of the Oshawa sub-division to the yard, whereas the access from the west is permitted either by new construction or by utilizing existing trackage which we possess.

I should say in this connection that there are operating problems to be resolved if we utilize the existing rails, and before that method of approach is determined upon we have to proceed further with our studies. If the difficulties are insurmountable, then the legislation empowers the Governor in Council to permit us to develop an alternate route.

Section 4 refers to the diesel engine shop which is self-explanatory.

Section 5 has reference to general facilities which are found in modern operations.

Senator BRUNT: What is a team track?

Mr. MACMILLAN: That is a track that is on level ground, straight, and with a road along side, and it harks back to the days when box cars were unloaded on to wagons drawn by teams. It is of significance in railway language.

Section 6 appertains to grade separations, and in that connection I may tell you we have a large number of grade separations involved here. There are three with the Canadian Pacific; six in respect of highways owned by the province; there are seventeen others which are major roads; there are four existing roads which are to be closed; there are six existing roads which are to be diverted; and there are a large number of road allowances and minor roads the disposition of which has not as yet been determined upon.

Senator ISNOR: Will the cost of the grade separations be borne entirely by the railways, or will part of it be borne by the Transport Commission?

Mr. MACMILLAN: I am afraid it is all on the railway. This is one of the disappointments we have, that we have to bear the whole cost of grade separations.

Senator HORNER: Will you be assisted by the Government fund?

Mr. MACMILLAN: No.

The CHAIRMAN: You are a newcomer and you have to pay the whole cost?

Mr. MACMILLAN: Yes. The fund is available only for crossings which have been in existence for three years or more.

Section 7 appertains to terminal stations and local facilities, and Section 8 has reference to the changing of functions in the existing yards to the function which they will perform after this project has been completed.

The next statement is in respect of global cost, which is to be \$87 million. The \$87 million is immediately divided between \$43 million for the yard and \$44 million for the access lines.

Senator ASELTINE: How soon will that money be required?

Mr. MACMILLAN: I will give you the anticipated schedule of expenditures. In 1959 we spent just in excess of \$5 million acquiring land. In 1960 we shall proceed with the acquisition of land and the definitive planning of the project at a cost of roughly \$8,200,000. In 1961 grade separation construction will begin and the anticipated expenditure is about \$5,500,000. In 1962 the real work on the yard will be started. We estimate the expenditure in that year will be \$18 million. In 1963 we hit the pinnacle of work, when it will be something of the order of \$28,500,000. In 1964 it will be slightly under \$20 million, and by 1965, for all practical purposes, the facility will be operating and the clean-up work will be something of the order of \$1 million and three-quarters to \$1,900,000. It will be seen therefore that it involves a seven-year program.

Senator HORNER: What worries me is that in all probability it will run to \$150 million rather than \$87 million before you are through.

Senator BRUNT: It cannot.

Mr. MACMILLAN: That cannot be, senator.

Senator ISNOR: Mr. MacMillan, in connection with the same thought that Senator Horner has expressed, may I ask this question: What did the yard at Montreal cost?

Mr. MACMILLAN: By reference to that map, I might answer your question. On the card that is on the blackboard easel we have shown the various other large terminals which are either under construction or finished in Canada at the moment.

I brought this map in order to point out two features. One is the strategic location of the city of Toronto, from the point of view of the railway, in that it takes a very large segment of traffic, from the west, coming from the north-west, traffic from Montreal and the Maritimes coming from the northeast, and

traffic from the United States which comes up through Windsor, Niagara and Sarnia, so that it is, in relation to our terminal requirements, pretty much at the hub.

I might also point out the major projects we have now underway. Winnipeg, Montreal and Moncton are, in concept, the same as this Toronto project, but they are well advanced now, and to reap the greatest benefit from these installations we should fill in the link of Toronto.

Starting at the east I can give you these figures in answer to your question. In connection with St. John's, Newfoundland, there is a yard project of \$1,800,000; in Moncton, \$15 million; in Montreal, one at \$28,500,000.

Senator ISNOR: Is that the total for Montreal, \$28,500,000?

Mr. MACMILLAN: Yes; and at Winnipeg there is one involving \$24,250,000.

Now you will recall that I pointed out that included in the \$87 million for Toronto there was an amount of \$44 million in respect of access lines. In none of these others have we had to acquire the means of getting to the yard. In Moncton we swing immediately to the south of the main line. We had to buy the land for the Winnipeg terminal and the Montreal terminal, but we did not have to build \$40 million-odd of railways in order to get there.

I have rather comprehensive notes, because it is difficult to know where to begin and how far to go in a matter of this kind. For that reason I should like to follow my notes in order to keep the presentation in some order.

If I might, I would direct your attention to this other map. This is a map of greater Toronto. It embraces the Toronto terminal, that is, that part of Toronto which lies within a radius of about ten miles drawn from the Union Station. It embraces approximately 100 miles of main track and it also contains about 360 miles of branch lines and other types of rail facilities.

The red lines are all of our sub-divisions coming into Toronto. The yellow line shows the boundaries of metropolitan Toronto. The principal highways are highway No. 401, which is the line along here, and highway No. 400, which is the line to the north of Barrie. The blue lines,—I believe they are blue,—are the lines of the Canadian Pacific Railway. Here is Lake Ontario. Oshawa is to the right and Oakville to the left, and the scale of the map is half a mile to the inch.

Beginning on the west, the line which parallels the lake is the Oakville sub-division and it carries traffic from the Niagara gateway to Sarnia and Windsor.

The line coming from the northwest is the Brampton sub-division, which carries traffic from Stratford and the Lake Huron district.

The next line running vertically in the centre is the New-Market sub-division, which is the line going to North Bay bringing traffic from northern Ontario.

The wiggly line to the right of that one is the Bala sub-division, and is the main line from western Canada. The Bala sub-division crosses the New-Market sub-division at Washago 100 miles north of Toronto.

The Uxbridge sub-division carries traffic from Lindsay and Peterborough and the line which parallels the lake at the bottom is the Oshawa sub-division, being the main line to Montreal. All these lines were built originally by different railways. With the exception of the Bala sub-division, the others became part of the Grand Trunk. They are all of some antiquity. The Bala sub-division is the youngest, having been placed in service in 1906, as I recall.

I direct your attention to the fact that these six sub-divisions all come together between the Don yard and Bathurst Street, and as a consequence all of the traffic coming off these sub-divisions or going out on to these sub-divisions for distribution must pass through this area from Bathurst to the Don, and this has created one of the problems to be resolved by the legislation.

The congestion here is enormous. In addition to the through traffic—that is, freight traffic—from these tracks, we have to work the Simcoe Street freight sheds which are on the north side of the tracks. We have to do all the transfer work in this vicinity and service the harbour and the piggy-back facilities on the south side.

The congestion reaches its pinnacle at Bathurst Street where, by virtue of the topography, and other installations, the trackage is very cramped and we are down to two main tracks to get through here.

The Canadian Pacific freight service does not utilize this congested area; instead it comes in from the east and west along the blue line of the Union Station area and they are here only for local movements.

The passenger trains of both companies are brought into this same bottleneck. The consequences are that we have at Bathurst Street as many as 525 trains a day in the 24-hour day, working their way underneath the bridge. This creates terrific congestion and there are many occasions when there are four, five, six and as high as eight trains waiting their turn to get through the plug.

Senator HORNER: Passenger trains?

Mr. MACMILLAN: All trains. And this embraces trains en route to the United States or eastern Canada. It also covers empty passenger trains that are being moved out of the station or moved in pending departure.

Senator BRUNT: This may eliminate one of the great sightseeing places in Toronto. On Sunday afternoon it was crowded.

Mr. MACMILLAN: That is right, but that is not very good for the railway.

Senator ISNOR: Would you point to the Toronto harbour facility?

Mr. MACMILLAN: Right here.

Senator ISNOR: Between Simcoe and Bathurst?

Mr. MACMILLAN: Yes. We therefore have this problem of enormous congestion to resolve. In addition to this, there is the question of how we can distribute freight traffic which originates on these branches and sub-divisions that I have mentioned.

We have four principal yards in Toronto: The Scarborough yard, the Danforth yard, the Bathurst yard and Mimico. Mimico is by far and large the biggest. It is twice as large as all the others put together.

Now then behind these main yards are four distribution yards which are West Toronto down to Leaside and Scarborough. I made an error before. It should have been Danforth, Don and so on.

The traffic coming in stops at one of these yards and when it is broken up and sorted into the local distribution trains,—you will probably know them, as way freights or transfers,—they then go out again. The congestion in the yards with the increase in the tractive power of modern locomotives is such that none of these yards can adequately handle the trains which are pulled into them. This inability began to be felt as early as the war years and has continued right through to the present time. We have had many occasions when we could not switch and break up the trains in these yards and have had to move them out as far as Belleville, London and even up as far as Barrie.

Senator ISNOR: You mean that with diesel power you can haul trains which are up to three times the length they used to be.

Mr. MACMILLAN: Let us say we bring 80 car trains into Toronto now, and the facilities are just not adequate, when the yards are congested, to handle these large trains. We face the problem all the time that cars are standing in these yards up to 24 hours before we can get them out, and when congestion becomes bad enough we have moved full trains back to Belleville, or London, or Stratford, or Barrie, to marshall them and then have to bring them back. This is the other side of the problem. It is the congestion that

exists today in Toronto. So I emphasize for you the two problems: There is congestion in the Bathurst area, the bottleneck together with the congestion in the yards themselves.

The question we had to answer was how best to resolve these two problems. In so far as the yards are concerned our studies indicated that we could resolve the congestion by expanding the yards in their present locations, but this at best was a very temporary remedy and an extremely costly one. The indications were that it would have cost as much for us to expand these facilities now as it would to build a new yard some place else, and that within 20 years, assuming the country continues to grow, these would have been inadequate and we would have spent as much money. Also we would not then been able to carry on without again embarking on costly expenditures.

Accordingly, that solution was abandoned and we then studied the desirability of a brand new facility. Obviously, in this study, the point of beginning was to determine where the new yard ought to be located. It had to be located in a spot which likewise resolved the problem of the congestion of Bathurst. We had to move away from it.

After due consideration we adopted seven factors that were used in the original study of where we should go. The first one was that the location should be one which required the minimum of back haul from the subdivisions. In other words we did not want it to be off centre, requiring the traffic from the west be hauled across the top of Toronto, sorted and then hauled back again.

The obvious location was one as close to and west of the Bala and Newmarket subdivisions as it was possible to be. That was because this was about the centre of gravity of the country north of Toronto.

Then again, the yard had to be kept as close to Metropolitan Toronto as it was possible to do. The yard itself had to be designed with a dual main hump, which we will explain to you, with an auxiliary local hump.

The land required for the yard would be of the order of three and a half miles long and half a mile wide, requiring approximately 1,200 acres. The yard had to be located so that convenient connections could be made with the six subdivisions which I gave you in the beginning.

The number and location of highway crossings were to be minimized from the point of view of expense, and then the last but not the least was that we should try to find farm land or land that had not been developed, to keep the cost down.

Senator ISNOR: What is the distance from the terminal to your new site?

Mr. MACMILLAN: About 13 miles. The location shown in the broken line on the map, with this funny little tail on the top, is the location which we felt best met all our requirements. I should observe also that it is the location that was favoured by the Metropolitan Toronto Planning Board. Now, with your permission, I would like to pin up on the board a drawing of the hump yard to give you an idea of what it really is like.

Senator BRUNT: Just before you leave that, Mr. MacMillan: That dotted line on the map, which is the access railroad, are there any connections with it so that trains can get on to it from these various other lines which are shown running straight across. I assume there are connections?

Mr. MACMILLAN: Yes, and I was coming back to the access lines.

Mr. Cann is the official most intimately familiar with this plan and if he has your permission I would like to ask him to explain it.

In the meantime I would like to place on record a few interesting statistics: The railway tracks in this yard will be about 165 miles long. The scale of the map is one inch to 200 feet. The continuous lines are the tracks which we plan to install in the beginning, and the broken lines are future tracks. This is the elasticity that is built into the yard, and the dotted lines are the roads.

The north on this map is to the right. We should put it up vertically but it is too long to do that. There are about 430,000 ties. To achieve the levelness required we have to move about 4 million cubic yards of material, and in the final ballasting there will be something of the order of 1 million yards of ballast, and the tonnage of steel that will be laid on it will be about 32,000 tons of steel rail.

The general elevation of the yard when finished will be approximately 400 feet above that of Lake Ontario.

Senator HORNER: May I ask if this farm land was good farm land?

Mr. MACMILLAN: I think some of it was.

Senator BRUNT: If it wasn't good it became good.

Mr. MACMILLAN: Yes, very quickly. I would now ask Mr. Cann to give his explanation.

Mr. J. L. Cann, Project Director, Canadian National Railways: Honourable senators, as Mr. MacMillan has explained, this map is lying on its side in relation to where it sits in the yard. The pull back track is up in here and the area down here represents the lower end of the yard with the tracks coming in from the east and west. This is Highway 7, one of the main highways in that particular area. It is shown here on this plan and up here on the larger plan. This little road in here, which is a minor side road, runs along here on this particular map.

The idea of a hump yard is a production line,—if you will,—for the sorting of freight cars in much the same manner as a production line in an automobile plant, which consists of putting a car frame on the line and adding parts on to the body until the automobile is complete. The hump yard is the same sort of thing, with the hump being a hill. The idea is to process these cars through here in almost a continuous type of production line. This production actually starts when the train leaves the last main terminal. At that time the consist of the train is sent by teletype to the yard office at this point at which prepunched I.B.M. type of cards are punched out for each individual car.

From the time the train leaves the last terminal until it arrives here certain things could happen. For instance, defective cars could be set off en route or cars could be picked up en route, and so on, so that the consist may not necessarily be the same when it arrives here. In order to check that there is a television camera at this point where the train passes and by this means the checkers in the yard can check the consist it received from the previous terminal against the consist of the train as it actually arrives. It is a double check.

The trains proceed into the receiving yard here, at which point the road engines, the locomotives, are cut off and go over here to the engine facilities. In essence this is a giant service station such as you take your own automobile into, and the engine is serviced in the same way. While the trains are standing in the receiving yard they are checked by the car department people for any defects such as defective wheels, couplings, and so on. This takes about 45 minutes. If any defects are found in the cars the information is immediately transmitted back to the yard office so that any change can be made in the consist.

Senator ISNOR: These cars are loaded with freight, are they?

Mr. CANN: Yes. Some might be empty but they are all freight cars.

Senator ISNOR: There is one other question.

I was going to ask this of Mr. MacMillan. What was the main purpose of developing this huge yard, for passenger or freight service?

Mr. CANN: It is wholly freight. There will be no passenger trains operated on this line.

Senator ISNOR: Largely to serve the Toronto area?

Mr. CANN: That is correct.

Mr. MACMILLAN: May I intercede at this point? These cars are in Toronto when they are marshalled, of course, but they are not necessarily cars which have originated in Toronto or which are going to terminate in Toronto, for this yard will take all of our United States traffic, for one thing. All of the traffic that enters Canada through the Niagara gateway, Windsor or Sarnia must come through Toronto. It is the only way we can get into industrial Canada. Therefore, there is a very large volume of traffic that is destined to Montreal and to the Maritimes that comes right through this yard. Similarly, there is western Canadian traffic which originates here and goes west on the Bala and Newmarket subdivisions.

Senator ISNOR: Thank you very much.

Senator LEONARD: Would there be some traffic from the Maritimes going through there?

Mr. CANN: Yes.

Senator BRUNT: For instance, there might be a carload of fish from the Maritimes destined for Niagara Falls?

Mr. MACMILLAN: That is correct.

Senator PEARSON: With respect to freight coming in from the United States and Sarnia, and so on, there is no access up in that area except to come along the front to the terminal?

Mr. MACMILLAN: No. As soon as Mr. Cann finishes his explanation of the yard I intend to proceed to describe the access lines.

Mr. CANN: While these cars are being actually examined in this receiving yard the information as to the destination, and so on, is placed in the I.B.M. machine and a switch list or a guide to delivery, if you will, is punched out on a list and sent to the various points around the yard. One is at this point here, the main hump, through which all the cars will eventually pass. When cars have been inspected and are ready to go, another switch engine comes down and picks them up and pulls them back on this track. When they pass this point the cars are then shoved back up the hump or the hill. The idea of the hill is simply to give gravity to the area, and it acts in the same way as a child sliding down a hill on a sleigh. It is 20 to 25 feet above the elevation of these tracks here. This is where the electronic and automatic—

Senator ISNOR: Excuse me, but is there a standard grade for these humps?

Mr. CANN: Yes, about 3 per cent going up and there is a very short dip of about 6 per cent going down. That is simply to snap the cars away from other cars to which they have been attached. These grades vary slightly depending on the individual cars and the things you want to do. But the automatic and electronic part of the hump comes in at this point here. Hump yards have been in operation for many years but have not had a major place in railway operations because until electronic equipment took over you had to ride the cars with riders, which meant a lot of men and there were accidents, and so on. But as cars come up to the top of the hump they are uncoupled either individually or up to three cars at a time from the remainder of the train back at this point here.

Senator BRUNT: Is that done automatically?

Mr. CANN: No, that is done by a man.

Senator BRUNT: That is done manually?

Mr. CANN: Yes, by lifting the pin. Inside the cabin is a conductor or an operator who has the prepared switch list which shows where each one of these cars is destined and where it is now sitting. He has a small panel about two or three feet square in front of him and on that panel there are a number of

buttons, one button for each track. The next car perhaps goes to track 25, so he pushes that button and that automatically switches it into track 25. He can tell by a computer where that car is going. The machine then receives other information about the car. There is also radar which represents the speed of the car, the same as the police use on the highway. There is a small electronic scale which measures the weight of the car, and from that you can determine by the mobility how far that car can roll. It may be too far for the space in the track, and so there are retarders or brakes. These retarders are essentially two bars that squeeze against the rim, and are automatically set up by the computer.

Senator ISNOR: Are these devices always accurate?

Mr. CANN: In the old days there were a lot of inaccuracies, but as the years went on more accuracy was developed.

Senator HORNER: Some carelessness, too?

Mr. CANN: Some of that, too, but that has also been reduced. Having been discharged from that, the speed is again measured as a double check before a second set of retarders are reached, and it should be just at the rate of speed for that particular track. As it passes over the switch into the track it is automatically checked. Where the car finally comes to rest is fed back to the computer.

Senator BRUNT: May I ask two questions? When these cars are uncoupled, what about the hose connections, do they come apart automatically?

Mr. CANN: Yes.

Senator BRUNT: Well, then they have to be coupled up manually?

Mr. CANN: Later on when they go to these other tracks, that is right.

Now, these tracks here, when they begin to fill out the cars are put over in the departure tracks, such as for Sarnia, Windsor, and so on. When sufficient cars are available for a train a train crew is called and the engine comes out of the servicing area over here and couples onto the head of the train and the train then departs for its destination. Certain of the cars, of course, have been picked out as defective and are switched out to the centre of the yard, and at intervals pulled over to this area here, and the defect is repaired and the car goes back into production. Other cars will be destined for Toronto, and it is necessary to reclassify these cars into zones and sections of Toronto, and these cars are also switched to the centre of the yard and put into a similar hump and classified.

The CHAIRMAN: So that is what you might call the Toronto sub-hump?

Mr. CANN: That would be the term for it, yes. Now at that point in the same manner, an engine is coupled on to the head end and then the train departs to its destined point. This classifies all cars that go through the Toronto area.

Senator BRUNT: Before you leave that point, where is the piggyback?

Mr. CANN: This line here which you see is a point about 800 feet in from Keele street. This line on the map represents about 800 feet back from that. This road here represents the top northeast corner of the hump yard. It is handy to the hump, and the cars having been inspected are quickly put into the piggyback facility. If they are to move out to other sections in the immediate area or to Toronto there are private roads inside the yard from which they will make their way out to Keele and out to highway 7, and so on. The engine facility is across the hump on the northwest segment right beside this particular area inside the yard.

Senator BRUNT: Now, what about the cleaning and custom facilities, or housekeeping facilities?

Mr. CANN: The cleaning facilities will be located down by our car repairs.

Senator BRUNT: Where is the housekeeping, cleaning, and other things?

Mr. CANN: Right near the car repair.

Senator LEONARD: Are there truck facilities apart from the piggyback?

Mr. CANN: Yes, for freight and team.

Senator HORNER: Do they operate on land already purchased?

Mr. CANN: We have about 21 to 26 parcels of land acquired for the yard. About 75 per cent of the area, I would say.

Senator HORNER: Do you think you will be able to compete with the ordinary truck traffic? You speak of Toronto. After all, so far as railroad business is concerned it is a very small part of Canada. As I see it, when I drive through that part of the country, I think almost everything is moving by truck. It is all very well to put in these improvements, excavating the ground and requiring people to climb up and down steps to trains; but when buses came in it all changed and they drive up and people step right on to the bus. The railways now find they have lost the passenger traffic, after going to all this expense to build these dugouts for people to run up and down stairs. Will you be able to compete with bus traffic?

Mr. CANN: Well, freight train and other freight handling agencies will, yes. This facility, we feel, will do a great deal to preserve the position of the railways, particularly in the competitive field.

Senator HORNER: I would hope so.

Mr. MACMILLAN: In respect of highway transport, of course, one of the great assets it possesses is the flexibility and speed with which movements can be achieved. You will recall that I said our problem in Toronto now flows from two sources. One is congestion in the yards which holds up our traffic by as much as 24 hours before we get it switched, and the second is the delay which is encountered in getting through Bathurst. In many instances, these are to be doubled because traffic is coming in and going out again. This project will permit trains to move freely in and out, and the cars to be marshalled and classified and sorted very quickly, and in a matter of hours they will be on their way.

Furthermore, the bulk of this traffic is car load traffic which is not, in the nature of things, immediately susceptible to truck handling—grain, for example, and other bulk commodities—which now congest the yards and make it difficult to handle the traffic which is vulnerable to truck competition. The removal of that block helps the competitive field.

Senator PEARSON: With respect to piggy-back—are there ample highway facilities available there for the quick movement of piggy-back traffic?

Mr. MACMILLAN: Yes.

Senator PEARSON: If it increases very rapidly are there ample facilities to get it away quickly?

Mr. MACMILLAN: We think this position is the best we can find. Highway No. 7 runs right over the yard.

Senator PEARSON: Of course, there will be heavy traffic on that highway now.

Mr. MACMILLAN: Yes, there is, and there will be in future, but there will be another highway in all probability built there in the foreseeable future, and both of these will be tributary to highways 400 and 401. That was one of the by-products of the location.

Senator KINLEY: Where is the main station on that picture?

Mr. CANN: It is not on this diagram. It is about 13 miles away by rail, and is down here.

Senator KINLEY: What gives me a bad impression of Toronto is that terrible platform entrance. You have to go down those narrow steps to get into the station.

Mr. MACMILLAN: Well, that is a passenger facility.

The CHAIRMAN: Have we now enough information from Mr. Cann about the hump yard? Shall we now have Mr. MacMillan proceed with his general statement?

Senator ISNOR: There is one other question I would like to ask Mr. MacMillan to enlarge upon, and that is with respect to the use of the diesel engine shop as well as the repair shop. Is that for this particular area, or is that central?

Mr. MACMILLAN: No, this corresponds with the diesel shop which is in the Moncton yard. As Mr. Cann explained, it is in the nature of a filling station. It is where the servicing of the diesels is done, where they are re-fuelled, and where minor repairs in the character of running repairs can be made.

Senator ISNOR: Well, is it likely to replace three or four other shops?

Mr. MACMILLAN: No, I would not think so. This will replace the one we have in Toronto. We have required a diesel repair shop in Toronto for some time, but we have postponed doing anything with it, and we have made do, until this facility had been determined upon, because had we built the diesel shop before we completed the plans for this yard then we would have built it at a place other than here and it would have been out of location now.

Senator BRUNT: How many other diesel repair shops will you have across Canada? You are not going to repair all the diesels in one place? It would not be feasible to bring them in.

Mr. MACMILLAN: A diesel locomotive is a different machine from a steam locomotive. We do not do the same type of repairs that we used to do. For example, a diesel engine itself is easily removed, and a rebuilt one inserted. We will only rebuild engines at Point St. Charles outside of Montreal, but all of the running repairs and all of those minor repairs normally required to keep the unit in operation will be done in Toronto in this location.

We have a similar facility in Moncton. We have a similar facility in the yard in Montreal, and one in the new yard now being built outside of Winnipeg, and then there are minor facilities of the same character located at each of those sites shown on the terminal map. I could get you the number, but I do not think you really wish it.

If I may I would now like to pass to the question of the access lines, and in considering the problem of locating the access lines we had certain standards. They have as their objective the means of getting to the yard, of course. The standards that were set were these; we had to find the shortest and most feasible route for both construction and operation. Again, it was to be as close to Metropolitan Toronto as possible. The construction specifications were that the grade should not exceed .7 of 1 per cent, and that the curvature should not be any greater than 3 degrees maximum. We had to separate all of the crossings with the Canadian Pacific, the highways, and most of the local roads. We had to put the access lines in a location that enabled practical connections to be made with all of the six subdivisions which I described to you before.

We wished the access lines to penetrate as many as possible of the areas already zoned for industrial purposes, and we wished to cause the minimum of interference with any existing permanent property improvements.

In addition to these factors there were certain major engineering and operating problems which created control points.

Firstly, there was the problem of connection with the Oshawa subdivision, being the main line to Montreal; secondly, there was the crossing of the Rouge River; thirdly, there was the crossing of Yonge Street; fourthly, the crossing of the Humber River; and fifthly, there was the connection with the Brampton subdivision.

Having used these standards and control points, we came to the conclusion that the line shown on the map in broken red ink best suited all of these standards. It is approximately 34 miles long.

Now with respect to access from the west, you will notice that we do not have any new construction west of Malton, and it has been our intention to utilize the existing railway now there. This is shown in the solid red line on which have been superimposed black dashes. It runs up what we call the Brampton subdivision to Georgetown and at Georgetown turns to the south along the Milton subdivision to Burlington. These two railways exist at the moment. If we can utilize them, we obviate the capital expenditure that would be necessary if we built south of Malton.

There are distinct problems involved in using that route. They flow basically from the fact that the Milton subdivision was originally constructed as a line from Allandale, and it climbs a quite perceptible hill. The Brampton subdivision is a line which serves Stratford and Georgian Bay and the Lake Huron country. It climbs the same hill, so that as we proceed west of Malton we have to go uphill on the Brampton subdivision to Georgetown and downhill on the Milton subdivision to Burlington.

Hills are important in railroading because they affect the ability of the locomotive to pull a train. They reduce the effective use and power of the locomotive. Whichever is the steepest hill on any route into and out of a terminal becomes what we call the controlling grade, and there must be adequate power in the locomotive to pull the whole train up the hill, even though the distance is quite short.

The Milton subdivision was built by a different company from that which built the Brampton subdivision and for many years Milton has been very little used. In consequence, there would be a major rehabilitation program involved in up-building the standard on the Milton subdivision to the point at which it could handle this traffic.

We are still studying this matter and do not know at this moment how it will finally be resolved.

The legislation contemplates that the Governor in Council may authorize us to construct from the point shown on the map, and marked 34 in a circle, being the end of the broken red line, down to the main line of the Oakville subdivision.

It is a question of economics and the resolution of some imponderables.

The CHAIRMAN: Is the possible construction of that additional line included in the \$87 million?

Mr. MACMILLAN: Included in the estimate is a figure of \$12 or \$13 million which is earmarked for the rehabilitation of the Milton subdivision and the adaptation of the Brampton subdivision to the requirements.

The CHAIRMAN: But if you decided to build a new line the \$12 or \$13 million would be available for such a line.

Mr. MACMILLAN: Yes.

Senator BUCHANAN: What is the grade?

Mr. CANN: A little over 1 per cent.

Senator BUCHANAN: How could that be eliminated?

Mr. CANN: On the Milton subdivision, to which Mr. MacMillan has referred, we would simply close off the service and pick up what is there and re-grade it and re-build it.

Senator BUCHANAN: Do you avoid the hill by coming south?

Mr. MACMILLAN: Yes.

Senator BRUNT: Are there bad grades between Georgetown and Allandale?

Mr. CANN: Yes. It is climbing all the way.

Mr. MACMILLAN: On the side of the economics, taking the whole project, I would say to you that we estimate that having built these facilities, and having them in operation, the operating costs of the Toronto terminal will be reduced approximately \$7½ million per annum, and if we deduct from that saving the cost of servicing the capital at today's rates, which we hope are as high as they will be for a while, then we are taken back to a net saving slightly in excess of \$2 million per annum.

I do not know that there is much more I plan to say at this moment. I might say that in addition to the dollar saving which we can earmark, there are other savings which are difficult to evaluate but which nevertheless are very real. They are such items as these. For example, out of this project we will attain an increased utilization of locomotives and rolling stock, and that expresses itself in our costs by our ability to get along with fewer units.

Also, there will be new industrial lands opened up and we would expect to reap a benefit in the form of increased traffic. Further, there will be a material speeding up in the handling of traffic, and this more expeditious handling can easily, as we would anticipate, increase the volume. It is therefore extremely desirable from that point of view. There are other intangibles.

Senator HORNER: You hope that the speeding up in handling will enable you to compete better with truck transportation?

Mr. MACMILLAN: We are quite satisfied it will.

Senator ISNOR: The \$87 million has not been taken into consideration in any previous bill at all?

Mr. MACMILLAN: No, just to the extent that the budget for 1959, which was approved by the Financing Act, did embrace \$5 million, and the budget for 1960, which you approved within the last week or two, did include the \$8,200,000 which we shall spend this year, and the expenditures in each of the succeeding years will be reflected in the annual budget for the year.

Senator ISNOR: So that I may understand this, included in the 1959 and 1960 bills already passed, you were given approval for the expenditure of \$13 million?

Mr. MACMILLAN: That is correct.

Senator ISNOR: And now you are asking for up to \$100 million.

Mr. MACMILLAN: No; that is misleading, and that is why I explained, or endeavoured to explain, the matter in my initial remarks. What we are asking now is authority to build these facilities and, as you will recall, I said that the legislation, following the pattern that was set many years ago, includes financing powers, but that these financing powers are never used, because we are under obligation to meet our financing requirements in the Financing and Guaranteeing Act each year.

Senator BRUNT: In other words, you do not expect to use the provisions contained in sections 5 to 8?

Mr. MACMILLAN: Not at all. They are inserted for the purpose of meeting an emergency. They are available and they have been there and available in every branch line statute we have had for the last 20 years.

Senator ISNOR: It is perhaps just as well that I asked this question so as to clear it up. Now I should like to ask one other question, not that you need their approval, but I was wondering whether the Toronto Harbour Board has seen your plans and approved of them.

Mr. MACMILLAN: The Toronto Harbour Board, to my knowledge, has never approved the plans. I am absolutely sure it has seen them because there has been a great deal of publicity given to these plans in Toronto. It does not affect them actually.

Senator ISNOR: That last remark anticipates the question I was just about to ask. It does not affect them?

Mr. MACMILLAN: I cannot contemplate that it does in any way.

Senator ISNOR: They are 13 miles from their terminal and I should think they would be interested. The closer you are to an operation the cheaper and the better it is for the two parties.

Mr. MACMILLAN: The Toronto Harbour as a matter of fact, is improved by this; it has not deteriorated because we take the congestion out and it is at that very location where the greatest density of traffic exists today. We shall not be destroying trackage into the harbour, but by taking a portion of the 500 trains per day out of that location we shall be able to move with greatly improved elasticity.

Senator ISNOR: In other words, because of this improved project of yours you will be able to give better service, you think, to the manufacturing and industrial centre?

Mr. MACMILLAN: We are quite convinced of that.

The CHAIRMAN: There must be a very great deal of freight traffic originating in this congested area in and around Toronto, on your Oakville subdivision and on your Oshawa subdivision. How are you going to deal with that? Are you going to take up by local trains to the hump yard and sort it there?

Mr. MACMILLAN: We will take that traffic out on the reverse movement of the trains that are made up in the hump yard. You will recall Mr. Cann explaining that we make a transfer movement from the hump yard down to the distribution yards, and the same locomotive would take the local traffic back again.

The CHAIRMAN: And that would go mostly to your present sorting yards?

Mr. MACMILLAN: Yes, those are the yards of original collection, if you wish, it is sub-post office really.

The CHAIRMAN: They will remain, and you will simply have a flow of traffic from and to them?

Mr. MACMILLAN: Yes.

Senator HORNER: That trackage which lies down by the harbour, is it proposed to abandon the lines leading to that area?

Mr. MACMILLAN: They will continue to use them but there will be a shrinkage in places like Mimico to an appreciable amount.

Senator HORNER: But the lines will not be abandoned entirely?

Mr. MACMILLAN: No.

The CHAIRMAN: Arising out of what Senator Horner just said I was going to ask you about salvaging some of your tracks. There seems to be an enormous amount of trackage lying about in places where yards of this type have been built in other places, trackage that seems to be abandoned and left there, with grass growing up between the ties. Do you have any salvage value for such tracks in this area? Do you expect to get any salvage area out of these abandoned tracks?

Mr. MACMILLAN: We are very hopeful of salvaging a very considerable sum of money out of these tracks because this land is extremely desirable from an industrial point of view. Also down in and through this area the demand for highway requirements are very great, and one of the by-products

of course is Simcoe street freight sheds which you may recall lie to the north of Front street and to the west of the station. There is a tract of land there which is three or four city blocks long and at least one block north and south, and perhaps two. We shall remove our facilities from here and the only trackage left there will be that required to serve a couple of industries. We have many acres of very valuable land and we plan to sell it for the highest price we can get.

The CHAIRMAN: Have you allowed for that in your request for \$87 million?

Mr. MACMILLAN: No.

Senator ISNOR: That has been pretty much the situation in Moncton, has it not?

Mr. MACMILLAN: It will be.

Senator ISNOR: But you have already sold some of the land and buildings there?

Mr. MACMILLAN: Yes. It is the same movement.

The CHAIRMAN: Is there any salvage value in old rails? Are they worth while picking up and selling for scrap?

Mr. MACMILLAN: Yes, indeed there is, but we do not scrap all of them. What we do is to degrade those rails, we start with new rail and go down six or seven categories and we scrap the lowest.

The CHAIRMAN: Or place it on a low-class line?

Senator BRUNT: I think there is an amount of between \$5 million and \$6 million in salvage value mentioned in here

Mr. MACMILLAN: Yes, we have used that figure.

Senator HORNER: It might be very much more.

Mr. MACMILLAN: I would hope it is appreciably more than that.

Senator PEARSON: The real value of course is the property and not the salvage obtainable from the rails?

Mr. MACMILLAN: Yes, it is the sale of the property.

The CHAIRMAN: Are there any further questions of Mr. MacMillan or Mr. Hayes?

Senator ASELTINE: Mr. Chairman, I move we report the bill.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: I think before we leave I should say a word of appreciation for the witnesses who have given us an extremely clear presentation and who have helped us a great deal with this map which they have brought here.

The committee adjourned.

